

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

PREPARED FOOD PHOTOS, INC.,)	Volume 1
)	
Plaintiff,)	Case No. 22-CV-642
)	
v.)	Milwaukee, WI
)	
SHARIF JABER and NOFAL, LLC doing business as FOOD TOWN MART,)	October 28, 2024
)	8:33 a.m.
Defendants.)	

TRANSCRIPT OF JURY TRIAL (EXCERPT)
BEFORE THE HONORABLE J. P. STADTMUELLER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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(Present)

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ALSO PRESENT:

MS. REBECCA JONES,
Intellectual Property Director,
Prepared Food Photos, Inc.

U.S. Official Court Reporter: JENNIFER L. STAKE, RDR, CRR
Proceedings recorded by computerized stenography, transcript
produced by computer-aided transcription.

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1 || TRANSCRIPT OF PROCEEDINGS

2 THE CLERK: The Court calls Prepared Food Photos,
3 Incorporated, versus Sharif Jaber and Nofal, LLC, doing
4 business as Food Town Mart, Case No. 22-CV-642, for a jury
5 trial. May I have the appearances beginning with the
6 plaintiff.

7 MR. DeSOUZA: Good morning, your Honor. Daniel
8 DeSouza for the plaintiff. And I have sitting with me at the
9 table Rebecca Jones, who is my client's intellectual property
10 director.

11 MR. STEINLE: Good morning, your Honor. I'm Timothy
12 Steinle from the law firm of Terschan, Steinle, Hodan and
13 Ganzer. I represent the defendant Sharif Jaber and Nofal, LLC
14 doing business as Food Town. Thank you very much.

15 THE COURT: Thank you. Good morning to counsel. Good
16 morning to you, Mr. Jaber and Ms. Jones.

17 Are there any matters counsel wish to raise before the jury
18 panel arrives?

19 || MR. DeSOUZA: None from the plaintiff, your Honor.

20 THE COURT: Thank you.

21 MR. STEINLE: Nothing for the defendants, your Honor.
22 Thank you.

23 THE COURT: Do counsel have all of their witnesses
24 here today?

25 MR. STEINLE: Your Honor, I do have my witnesses

1 present in court today. All -- the plaintiff -- I mean, excuse
2 me, the defendant and the two identified witnesses Nofal Hamed
3 and Amjad Hamed are here. They will be present throughout the
4 trial so that we can proceed in an orderly fashion.

08:35

5 THE COURT: All right.

08:35

6 Mr. DeSouza, are your witnesses here?

08:35

7 MR. DeSOUZA: Yes, your Honor.

08:35

8 THE COURT: All right. The two witnesses behind the
9 rail, if you'd move across the aisle because part of the jury
10 panel will be seated in those rows behind the rail. Thank you.

08:35

11 As the Court indicated at the final pretrial conference,
12 when the jurors come in the courtroom this morning, they will
13 have already be randomized, meaning they will appear in a
14 random order. We will proceed with the voir dire of 14 jurors
15 seated in the jury box. If at the conclusion of the voir dire
16 of those 14 we need to excuse one or more of them for cause, I
17 will have other jurors seated in the back of the courtroom step
18 forward and take those seats.

08:36

19 If at the conclusion of the Court's voir dire counsel
20 believe they have other questions, either of the panel as a
21 whole or individual jurors, we will undertake that follow-up
22 voir dire in the jury room so as to not contaminate the panel
23 as a whole.

08:37

24 As the Court explained at the final pretrial, each side is
25 allotted three peremptory strikes. The way those are

1 exercised, our court security officer will circulate the jury
2 list first to plaintiff's counsel, then to defendant's counsel.
3 Each side will exercise their first strike, then the second and
4 then the third. The plaintiff has the first strike, the
5 defense has the last strike. We'll be picking a jury of seven.
6 And if all seven are present at the end of the trial, all seven
7 will deliberate. The jury's verdict in federal court must be
8 unanimous. There are no dissenting jurors permitted.

08:37 9 Any other matters before the panel arrives?

08:37 10 MR. DeSOUZA: No, your Honor.

08:38 11 Just for housekeeping purposes, I assume that witnesses who
12 are not parties will be excluded once the --

08:38 13 THE COURT: Well, if you make an appropriate motion,
14 we'll entertain it.

08:38 15 MR. DeSOUZA: I -- I do at this point, your Honor. I
16 think before the jury even gets here, I don't want nonparty
17 witnesses to be hearing the testimony of others until they've
18 testified, so I do move the Court to exclude Mr. Hamed -- I
19 think both -- both Mr. Hameds from the trial until they've
20 testified.

08:38 21 THE COURT: All right. Ms. Vraa, you can escort them
22 to the witness waiting room, which is 426 across the hall.

08:38 23 The Court will stand in recess pending the arrival of the
24 panel, which should be in the next five to ten minutes. The
25 Court stands in recess.

08:39 1 (A short recess was taken.)

08:55 2 COURT SECURITY OFFICER: All rise for the jury.

08:55 3 (The jury panel entered the courtroom.)

08:56 4 COURT SECURITY OFFICER: Okay. Please be seated.

08:56 5 THE COURT: Good morning, members of the jury panel.

6 My name is JP Stadtmueller. I am the US district judge before
7 whom the case for which you have been summoned this morning is
8 going to be tried. I've served as an Article III judge here in
9 the Eastern District of Wisconsin for more than 37 and a half
10 years. I've tried over 250 cases, and so you're before a very
11 experienced judge. I was appointed by President Reagan on June
12 1st of 1987. I want to welcome each of you to our courthouse
13 this morning.

08:57 14 I appreciate that for many of you, this is an entirely new
15 and different experience. But you should also understand that
16 the jury trial as we know it was first conceived more than 750
17 years ago when the barons of England forced King John to grant
18 them that right. And shortly after our constitution was
19 adopted, soon to be 250 years ago, amendments were added to
20 ensure the right to a jury trial in both civil and criminal
21 cases.

08:57 22 I also want to take this opportunity to interview --
23 introduce to you the balance of the court staff. Our court
24 reporter this morning is Ms. Jennifer Stake. My clerk is Ms.
25 Caitlin Willenbrink. The Court security officer in charge of

1 the jury is Ms. Lynda Vraa. And I'm going to ask that each of
2 you now stand so that Ms. Willenbrink can administer the oath
3 to you as prospective jurors.

08:58 4 THE CLERK: Please raise your right hands.

08:58 5 (The jury panel is sworn.)

08:58 6 THE JURORS: I do.

08:58 7 THE CLERK: Thank you.

08:58 8 THE COURT: Members of the jury panel, the name of the
9 case for which you have been summoned this morning is entitled
10 Prepared Foods Photos, plaintiff, versus Sharif Jaber and
11 Nofal, LLC doing business as Food Town Mart, defendants, Case
12 No. 22-CV-642.

08:59 13 For your general information, the party who initiates a
14 lawsuit is referred to as the plaintiff. The party or parties
15 against whom a lawsuit is initiated are referred to either as a
16 defendant singular or in this case defendants plural. This is
17 a copyright infringement case. Plaintiff Prepared Food Photos
18 operates a subscription service through which users are able to
19 access copyrighted stock photos of food items. As relevant to
20 this particular case, Prepared Food Photos owns a valid
21 copyright on a stock photograph depicting pork chops.

09:00 22 The defendants in this case are an individual Sharif Jaber
23 and a business known as Nofal, LLC, which Sharif is the owner,
24 sole member, and registered agent of Nofal, LLC. The limited
25 liability corporation owns and operates a food store doing

1 business under the trade name Food Town Mart. So when I refer
2 to the business defendant as Nofal, LLC doing business as Food
3 Town Mart, I refer to Mr. Jaber and Nofal, LLC doing business
4 as Food Town Mart together as the defendants.

09:01

5 Prepared Food Photos copyrighted a photograph of pork chops
6 which was posted on a Facebook business page entitled Villard
7 Food Town in September of 2020. Prepared Food Photos alleges
8 that the photo was posted there without its permission
9 infringing its copyright to the photo. It further contends
10 that this Facebook page was affiliated with and under the
11 control of Nofal, LLC doing business as Food Town Mart and/or
12 Sharif Jaber and, therefore, that one or both defendants can be
13 held liable for the alleged infringements.

09:02

14 The defendants dispute that they were affiliated with or
15 had control over the Villard Food Town Facebook page where the
16 subject photo was posted. They also suggest that use of any of
17 the plaintiff's photo was a fair use.

09:02

18 There are disputed issues, therefore, which have been
19 created in this case which the jury selected to hear the
20 evidence in the case must decide; first, whether the defendant
21 Nofal, LLC doing business as Food Town Mart copied protected
22 expressions in the plaintiff Prepared Foods Photo copyrighted
23 work thereby infringing the plaintiff's copyright;

09:03

24 Second, whether the defendant Sharif Jaber is vicariously
25 liable for the infringing acts, if any, of Nofal, LLC doing

1 business as Food Town Mart, including whether Sharif Jaber had
2 the right and ability to control the alleged infringement of
3 Nofal, LLC doing business Food Town Mart but failed to do so
4 and whether Sharif Jaber profited from the alleged infringement
5 of Nofal, LLC doing business as Food Town Mart;

09:04 6 Next, whether the defendants' alleged copying of Prepared
7 Food Photos protected expression was fair use; and, finally, if
8 the defendants were to be found liable by the jury, what
9 damages, if any, is Prepared Food Photos entitled to receive
10 for the alleged copyright infringement.

09:04 11 To enable the attorneys to select a jury consisting of
12 seven individuals to hear the evidence in this case, it will be
13 necessary for the Court to put a number of questions to the
14 panel, commonly referred to as the voir dire examination. The
15 words "voir dire" are a French derivation and are translated to
16 mean "to speak the truth" as individually each of you respond
17 to the various questions which are put to you. These questions
18 are not designed to embarrass you or to satisfy the curiosity
19 of the Court or the lawyers for the parties, but rather to
20 disclose in a candid, open manner any bias or prejudice any one
21 of you might hold, either toward the parties or the underlying
22 facts in this case.

09:05 23 Stated another way, this procedure will serve to bring out
24 anything in your respective backgrounds or experience that
25 might somehow affect your ability to serve as a fair and

1 impartial juror and at the same time enables the Court to
2 determine whether any potential juror ought be excused for
3 cause. The procedure also enables the lawyers for the parties
4 to exercise their individual judgment with respect to what is
5 known as peremptory challenges, that is, challenges to
6 individual jurors for which no reason need be given by counsel.

09:06

7 Before proceeding with my questions touching on your
8 qualifications to serve as a juror in this case, I'm going to
9 ask that the first 14 jurors who are seated in the jury box to
10 stand and provide a little background information about
11 themselves. You will note that a cue card with the identified
12 areas of inquiry has been placed on the screen across from the
13 jury box. You may use this cue card as a frame of reference to
14 provide the information required, which includes your name;
15 your age; your address -- but we do not want street address,
16 just the community, village, or county in which you reside --
17 your marital status; whether you have any children; the extent
18 of your formal education; your occupation and employer now or,
19 if retired, before retirement; and finally, if married, your
20 spouse's occupation or, if retired, before he or she retired.

09:08

21 When providing this information, I would ask that each of
22 you speak slowly since the attorneys for the parties may wish
23 to make some notes concerning your responses.

09:08

24 (Whereupon the voir dire/jury selection was
25 conducted.)

09:08

1 (Whereupon the jury selection/voir dire was
2 concluded.)

09:58

3 THE COURT: While counsel exercise their peremptory
4 challenges, I'm going to provide the jury panel with some
5 preliminary introductory instructions to guide the jury in its
6 participation in the trial of this case. It will be the jury's
7 duty to decide from the evidence to be presented what the facts
8 in this case are. The jury and the jury alone constitute the
9 judges of the facts.

09:59

10 The jury is to determine the facts from the evidence to be
11 presented as well as the exhibits that may be introduced during
12 the trial. It will be for the jury to determine the inferences
13 which it feels may be properly drawn from such evidence.

09:59

14 Nothing the Court may say or do during the course of this
15 trial is intended to indicate nor should be taken by the jury
16 as indicating what the jury's ultimate verdict should be. No
17 statement, ruling, remark, or comment which the Court may make
18 during the course of this trial is intended to indicate either
19 the Court's opinion as to how you should decide the case or to
20 influence the jury in any way in its determination of the
21 facts.

10:00

22 During the course of the trial, the Court may occasionally
23 ask questions of a witness in order to bring out facts not
24 fully covered in the testimony. Please do not assume that the
25 Court holds any opinion on the matters to which the Court's

1 questions may have related. Remember that the jury and the
2 jury alone are at liberty to disregard all comments of the
3 Court in arriving at its own findings as to the facts.

10:00 4 The Court may also find it necessary to admonish the
5 lawyers. And if the Court should do so, you should not show
6 any prejudice toward a lawyer or his or her client because the
7 Court has found it necessary to issue such an admonishment.

10:01 8 From time to time during the trial, it may become necessary
9 for the Court to discuss matters with the attorneys outside the
10 presence of the jury, either by holding a conference at the
11 bench when you are present in the courtroom or by calling a
12 recess. Please understand that while you are waiting, we are
13 working. The purpose of these conferences is not to keep
14 relevant information from the jury, but rather to decide how
15 certain evidence is to be treated under the rules of evidence
16 so as to avoid confusion and error. We will, of course, do
17 what we can to keep the number and length of these conferences
18 to a minimum.

19 The Court may not always grant an attorney's request for a
20 conference. Do not consider the Court's either granting or
21 denying a request for a conference as any indication of the
22 Court's opinion of the case or what the jury's verdict should
23 be.

10:02 24 The evidence from which the jury will find the facts in
25 this case will consist of the testimony of witnesses,

1 documents, and other things received into the record as
2 exhibits and any facts the lawyers might agree or stipulate to
3 or that the Court might instruct you to find as a matter of
4 law.

10:02 5 Certain things do not constitute evidence in the case and
6 the jury must not consider them. Such matters include:
7 Statements, arguments, and questions by the lawyers do not
8 constitute evidence in the case. Similarly, objections to
9 questions do not constitute evidence.

10 A lawyer has an obligation to his or her respective client
11 to make an objection when they believe evidence being offered
12 is improper under the rules of evidence. The jury should not
13 be influenced by an objection or by the Court's ruling on any
14 objection. If the objection is sustained, the jury should
15 ignore the question. On the other hand, if the objection is
16 overruled, the jury should treat the answer as it would any
17 other. Similarly, if the jury is instructed that some item of
18 evidence is received for a limited purpose, the jury must
19 follow the Court's instruction in that regard.

10:03 20 Testimony that the Court has excluded or instructed the
21 jury to disregard does not constitute evidence in the case and
22 must not be considered by the jury. Anything the jury may have
23 seen or heard outside the courtroom does not constitute
24 evidence in the case and must be disregarded, for the jury is
25 to decide this case solely from the evidence to be presented

1 here in the courtroom.

10:04 2 There are two kinds of evidence, direct and circumstantial.
3 Direct evidence is direct proof of a fact, such as the
4 testimony of an eyewitness. Circumstantial evidence, on the
5 other hand, is proof of facts which you, the jury, may infer or
6 conclude that other facts exist. I will provide the jury with
7 further instructions on these as well as other matters at the
8 end of the case, but I want the jury to have it in mind that it
9 may consider both kinds of evidence.

10 10:04 It will be up to the jury to decide which witnesses to
11 believe, which witnesses not to believe, and just how much of
12 any witnesses' testimony to either accept or reject. In
13 considering the weight and value of the testimony of any
14 witness, the jury may take into account each of the following:

15 10:05 First, the witness' ability to see or hear or know the
16 things about which the witness is testifying;

17 10:05 Second, the appearance, attitude, and behavior of the
18 witness;

19 10:05 Third, the quality of the witness' memory;

20 10:05 Fourth, whether the witness has an interest in the outcome
21 of the case, or any motive, bias, or prejudice;

22 10:05 Fifth, the inclination of the witness to speak truthfully
23 or not, along with the probability or improbability of a
24 witness' statements; and

25 10:06 Sixth, whether the witness' testimony was contradicted by

1 anything the witness said previously or by the testimony of
2 other witnesses or other evidence received during the trial.

10:06

3 Thus, the jury may give the testimony of any witness such
4 weight and value as the jury believes the testimony is entitled
5 to receive.

10:06

6 As the Court earlier explained, this is a civil case, and
7 the party who wants you to find in its favor has the burden of
8 proof. This burden of proof is to satisfy you by the greater
9 weight of the credible evidence to a reasonable certainty that
10 you should find for that party. When the Court says a
11 particular party must prove something by the greater weight of
12 the credible evidence or when I use the expression "if you
13 find" or "if you decide," this is what the Court means: The
14 evidence in favor of one finding has more convincing power than
15 the evidence opposed to it.

10:07

16 "Credible evidence" means evidence you believe in light of
17 reason and common sense. "Reasonable certainty" means that you
18 are persuaded based upon a rational consideration of the
19 evidence. The rule does not, of course, require proof to an
20 absolute certainty since proof to an absolute certainty is
21 seldom, if ever, possible in any case. However, a guess is not
22 enough to meet the burden of proof.

10:07

23 Those of you who have previously served as a member of a
24 jury in a criminal case recall having heard of the standard
25 proof beyond a reasonable doubt. As the Court earlier

1 explained, that requirement does not apply to a civil case such
2 as this one. Therefore, you should put that standard out of
3 your mind.

10:08 4 Now I have a few words for the jury regarding its conduct.
5 First, I do not want any member of the jury to discuss this
6 case until the end of the case when you retire to the jury room
7 to begin your deliberation and decide upon your verdict.

10:08 8 Second, I do not want any member of the jury either
9 personally or electronically to communicate with anyone else
10 about this case or anyone who has anything to do with it until
11 the trial has been completed and you have been discharged as a
12 member of the jury. "Anyone else," of course, includes members
13 of your family, friends, and colleagues in the workplace. You
14 may simply tell them that you have been selected as a member of
15 a jury in a civil case in Judge Stadtmueller's court and that
16 Judge Stadtmueller has specifically instructed me that I'm not
17 to discuss the case with anyone until after I have been
18 discharged as a member of the jury.

19 At the same time, the Court well knows and appreciates the
20 fact that many of you as jurors take advantage of one or more
21 of the wonderful communication technologies available to each
22 of us. However, during this trial, you may not use these
23 devices, including cell phones, Blackberries, iPhones, or iPads
24 to communicate with anyone about this case whether in the form
25 of an e-mail, text, or voice message or by way of an internet

1 blog or chat room or by way of one or more of the social
2 networking websites such as Facebook, Instagram, LinkedIn,
3 X/Twitter, Myspace, Snapchat, or YouTube.

10:10 4 Third, I do not want any member of the jury to approach you
5 to discuss this case or anyone who has anything to do with it.
6 Should anyone approach you to discuss this case, please report
7 it to Ms. Vraa immediately; and she, in turn, will report it to
8 the Court.

10:11 9 Fourth, I do not want any member of the jury to read any
10 newspaper stories or articles or listen to any radio or
11 television report or blog that may relate to this case or
12 anyone who has anything to do with it. Frankly, I do not
13 expect or anticipate any media attention to the case; but in
14 the abundance of caution, I always remind jurors that if you're
15 one of those who listens to the early morning radio news or
16 reads the morning paper to have someone else in your household
17 look at that material to ensure that there isn't anything about
18 a case in front of Judge Stadtmueller such that even through
19 inadvertence you may be exposed inappropriately to those sorts
20 of materials.

10:12 21 Fifth, I do not want any member of the jury to conduct any
22 independent investigation of the case or the facts associated
23 with the case for, as a jury, each of you is called upon to
24 decide this case solely from the evidence presented here in the
25 courtroom and from no other source. That means until such time

1 as you are discharged as a member of the jury, you may not
2 conduct any independent research about this case or anyone who
3 has anything to do with it.

10:12 4 In other words, you may not consult with any form of
5 internet reference material, including blogs, dictionaries, an
6 internet search, website or the like to obtain information
7 either about the parties in this case or the facts of this case
8 or anyone who has anything to do with it.

10:13 9 Each of these rules is intended to ensure that jurors
10 remain impartial throughout the trial. Should any juror have
11 reason to believe that another juror has violated these rules,
12 it should be reported to Ms. Vraa or the Court immediately.
13 Should any juror not comply with these rules, it may well
14 result in the Court having to grant a new trial involving
15 additional time and significant expense to both the parties,
16 their lawyers, as well as the taxpayers.

10:13 17 Finally, the Court does not want any member of the jury to
18 form an opinion in this case until you've had the benefit of
19 all of the evidence together with the Court's instructions on
20 the applicable law. The Court requires that each of you keep
21 an open mind until you begin your deliberations at the end of
22 the case. Once the case has been formally submitted to you,
23 you are free to discuss it with your fellow jurors, but only in
24 the jury room. It is extremely important that each of you keep
25 an open mind, not to decide any matter raised during the trial

1 until the entire case has been submitted to you pursuant to the
2 Court's instructions.

10:14 3 Should any member of the jury wish to take notes during the
4 trial, you will be free to do so. On the other hand, you are
5 not required to take notes if you would prefer not to do so.
6 That is a matter that is left up to each individual juror.

10:15 7 Should you do or do not take notes, you should not be
8 influenced by the notes of other jurors, but rather rely upon
9 your own recollection of the evidence. Should any member of
10 the jury wish to take notes, I would admonish you to be careful
11 not to get so involved in note-taking that you become
12 distracted from what is actually occurring during the witness'
13 testimony or the showing of exhibits.

14 Notes taken by any juror do not constitute evidence in the
15 case and must never take precedence over individual independent
16 recollection of jurors concerning the evidence received during
17 the trial.

10:15 18 Should members of the jury elect not to take notes, you
19 should rely on your independent recollection of the trial
20 proceedings and not find yourself unduly influenced by the
21 notes of jurors. Notes are not entitled to any greater weight
22 than the memory or impression of each juror as to what the
23 evidence and testimony may have been.

10:16 24 Any notes taken by the jury during -- juror during this
25 case should not be disclosed to anyone other than your fellow

1 jurors and then only during your deliberations in the jury room
2 at the end of the case.

10:16

3 During the trial, your notebooks as well as other materials
4 that may be distributed to you must be left in the courtroom at
5 all times. When you leave at the end of the day, your notes
6 will be secured and not read by anyone. At the end of this
7 case, each of you will have to make his or her decisions based
8 upon what you recall the evidence and testimony to be.

10:17

9 Members of the jury will not have a transcript of the
10 various witnesses' testimony with which to consult during your
11 deliberations. Furthermore, it is difficult and time consuming
12 for our court reporter to read back lengthy testimony.
13 Accordingly, it is of extreme importance that each of you give
14 this case, including the testimony and evidence received during
15 the trial, your utmost and undivided attention.

10:17

16 That concludes the Court's introductory instructions. And
17 at this time, I'm going to have Ms. Willenbrink publish the
18 names of those jurors who have been selected.

10:18

19 As your name is called, please note where you are now
20 seated and at the conclusion of the publication of the names of
21 those jurors who are selected, I will excuse those jurors who
22 are seated in the back of the courtroom as well as those jurors
23 who have been excused by counsel.

10:18

24 Ms. Willenbrink.

10:18

25 THE CLERK: Juror No. 1, ***** *; Juror No. 5,

1 ***** *****; Juror No. 6, ***** *****; Juror No. 8, *****
2 *****; Juror No. 9, ***** *****; Juror No. 11, *****
3 *****; and Juror No. 14, ***** ***.

10:19 4 THE COURT: All right. If your name was called and
5 you're seated in the jury box, you can keep your seat. If your
6 name was not called, you can take a seat in the back of the
7 courtroom.

10:19 8 (The jurors not selected enter the gallery.)

10:19 9 THE COURT: All right. For those jurors who are
10 remaining in the jury box, those of you who are seated in the
11 back row, if you'd take a seat in the front row. And the --
12 once you've taken those seats, I will have Ms. Willenbrink
13 reread the names of those jurors who have been selected. As
14 your name is called, please raise your hand.

10:20 15 THE CLERK: Juror No. 1, ***** ****; Juror No. 5,
16 ***** *****; Juror No. 6, ***** *****; Juror No. 8, *****
17 *****; Juror No. 9, ***** *****; Juror No. 11, *****
18 *****; Juror No. 14, ***** ***.

10:21 19 THE COURT: Thank you.

10:21 20 Now for those jurors selected, I'm going to ask that you
21 stand and Ms. Willenbrink will administer the oath to you.

10:21 22 THE CLERK: Please raise your right hands.

10:21 23 (The jury is sworn.)

10:21 24 THE CLERK: Thank you.

10:21 25 THE COURT: You may be seated.

10:21

1 Members of the panel, that is, those of you who are seated
2 in the rows behind the rail, I now am going to excuse you
3 because our trial is the only case for which a jury was to be
4 selected today. In excusing you, I well appreciate that it has
5 no doubt been with a bit of inconvenience that you were hailed
6 into a federal courtroom on a Monday morning. But I suggest to
7 you that at the end of the day, it is an incredibly, incredibly
8 small price that each of us pay from time to time to fulfill
9 that most important of civic obligations, and that is to serve
10 as a member of a jury.

10:22

11 Even Judge Stadtmueller back in May was over in Milwaukee
12 County for three days on different jury panels. I wasn't
13 selected, but it underscores a couple of important facts; and,
14 that is, no one is excused from the obligation to serve if you
15 are otherwise qualified and selected. I didn't happen to be
16 selected. But like you this morning, without each of you
17 present, we would not have had a sufficient number of potential
18 jurors from which ultimately to select a jury.

10:23

19 So with those thoughts, I'm now going to excuse you.
20 Perhaps on some future occasion, you may be summoned yet once
21 again to serve either in our federal or state courts. Have a
22 wonderful week, and please do not forget to cast your vote next
23 Tuesday.

10:23

24 Members of the panel, that is, those of you seated in the
25 jury box, I'm going to take our morning recess at this time.

1 Ms. Vraa will familiarize you with the jury room. You will
2 note that there's bottled water available. There are restrooms
3 available. There's coffee available, should any of you desire
4 to have coffee.

10:24 5 There are only two places that you should be when you're in
10:24 6 the building for the next two to three days, and that is either
7 here in the courtroom or in the jury room. I, again,
8 appreciate for many of you this is perhaps the first time you
9 have ever been in this grand historic structure and there may
10 be an incentive to want to take the proverbial self-guided
11 tour. I would suggest that you defer doing so until after the
12 case has been completed.

10:24 13 And the reason that I make that suggestion is to ensure
14 that even through inadvertence none of you come in contact with
15 either the parties, the lawyers, or the Court or its staff.
16 And should you meet any one of us, whether in the court or
17 elevator, please understand that it is not our intention to
18 avoid you or to shun you, but rather to ensure that there is no
19 verbal contact between one or more of you and anyone associated
20 with this case.

10:25 21 As you might appreciate, you or I engaging one another,
22 whether in court or in a stairwell, may be viewed by someone
23 else as an inappropriate contact, and we want to avoid that.
24 And to ensure that such is not the case, I would simply ask
25 that out of respect for our judicial process, you not engage in

1 those activities.

10:26 2 Once you are in the jury room, it's locked, so you are free
3 to leave your cell phones or your electronic devices, including
4 computers, in the wardrobe in the juror room. They will not be
5 accessible by anyone.

10:26 6 When we get to deliberations, you are not permitted to have
7 a cell phone in the jury room during deliberations. Ms. Vraa
8 will collect them. She will monitor them. In case any of you
9 receive a phone call that needs attention, she will get it to
10 you. So if anyone is expecting any sort of contact that may be
11 of an emergency nature, simply let Ms. Vraa know; and she will
12 monitor your communications devices.

10:27 13 Finally, there's no smoking permitted in the building,
14 including the jury room. So if there are any of you who do
15 find it necessary to smoke, I would simply ask that you do so
16 before you come into the courthouse in the morning or during
17 our lunch and recess or at the end of the day.

10:27 18 So with those thoughts, I will remind you once again:
19 Please do not discuss this case among yourselves during this
20 recess. I want each of you to keep the open mind that you have
21 pledged to keep when you took your oath as a juror not to
22 decide any fact concerning this case until you've had the
23 benefit of all of the evidence and testimony to be offered
24 together with the Court's instructions on the applicable law.

10:27 25 When we reconvene, we'll move to the next phase of this

1 case in which counsel for the parties are afforded an
2 opportunity to address you in an opening statement. That is an
3 opportunity to explain to you or provide an outline or a road
4 map, as it is often referred to, of what each side expects the
5 evidence to show.

10:28

6 Obviously opening statements and closing arguments do not
7 constitute evidence in the case, but what they are designed to
8 do is cause you to focus on what they believe the evidence has
9 shown. And in an opening statement, it's particularly
10 beneficial to you as a jury because the evidence and the facts
11 to which that evidence may relate may not necessarily come
12 before you in the same chronological timeline order that those
13 facts may have been developed. And so it's in your interest
14 that you have this overall framework within which to relate the
15 various bits and pieces of evidence as they are presented. But
16 ultimately, it is the evidence which serves as the focal point
17 of your deliberations and fact-finding and return of a verdict.

10:29

18 So with those comments, I'm going to excuse you for 15
19 minutes. When we resume at 10:45, we'll pick up with the
20 opening statements.

10:29

21 The Court stands in recess until 10:45.

10:29

22 COURT SECURITY OFFICER: All rise.

10:29

23 (The jury left the courtroom.)

10:30

24 COURT SECURITY OFFICER: The Court stands in recess.

25 You can be seated.

10:31 1 (A short recess was taken.)
10:46 2 COURT SECURITY OFFICER: All rise.
10:46 3 (The jury entered the courtroom.)
10:46 4 (The court is called to order.)
10:47 5 THE COURT: Members of the jury, Ms. Vraa has provided
6 you each with a copy of a notebook. You'll note on the inside
7 of the top of the first page, just put your juror number.
8 Don't write on the cover or put your name anywhere in the book,
9 just your juror number.
10:47 10 And we're now ready to move to the next phase of the case
11 in which, as the Court explained during its preliminary
12 instructions, have an opportunity to outline for you what each
13 side expects the evidence in the case will show. So at this
14 time, I'm going to call upon Mr. DeSouza, plaintiff's counsel,
15 to introduce you to the plaintiff's case.
10:47 16 Mr. DeSouza.
10:48 17 MR. DESOUZA: Yes, thank you, your Honor.
10:48 18 This is normally where I would say "ladies and gentlemen of
19 the jury," but it appears we're gentlemen heavy today. As the
20 judge introduced this case at the beginning, this is a
21 copyright case. It involves a photograph, which my client
22 Prepared Food Photos says was used by the defendants without my
23 client's permission. Under normal circumstances, this would be
24 a pretty straightforward case. It's either my client's photo
25 or it's not. The defendants either used it or they didn't.

10:48

1 But beyond the simple explanation as to what this case is
2 about, I'd like to tell you this case is actually about three
3 things. The first thing it's about is a photograph. The
4 second is a Facebook page. The third, unfortunately, is a
5 person who has not told the truth for the last three years of
6 this case going on. And that is why each of you is here today.

10:49

7 What about the photograph? As we said, it was a photograph
8 of pork chops. Who owns it? You'll hear testimony that my
9 client owns the photograph. Prepared Food Photos is a
10 subscription service stock food agency that specializes in food
11 photos that has been around dating back to the mid '90s at this
12 point. They've built a library of some 18,000 professional
13 photographs all developed in house all by their in-house
14 photographers. This is one of those 18,000 photographs.

10:49

15 They have a subscription service where people gain access
16 to the entire library of the photographs. You have to pay them
17 a monthly fee for access to that, and you're free to download
18 and use their photographs.

10:49

19 You are not free, if you're not a subscriber, to just go to
20 their website or go online, find a photograph, and decide: I'd
21 like to use that myself on my website or my social media page
22 or in this case the Facebook page. What you will hear today is
23 there is a Facebook page, a Facebook page that back in 2021 was
24 named Villard Food Town. And it has an address on it of 3217
25 West Villard Avenue, Milwaukee, Wisconsin. It's got the

1 store's phone number. It's got dozens if not hundreds of
2 photos of ad flyers from the store, products that are for sale
3 at the store, everything else that you would associate with
4 this grocery store.

10:50 5 One of those photos and one of those posts had my client's
6 photograph, and it was a post that said pork chops \$2.99 a
7 pound, chicken wings something else. They used three different
8 photos. One of them is our client's photo.

10:50 9 The defendant in this lawsuit, when my client discovered
10 this going back, again, to 2021, hired a law firm, my law firm,
11 to send a letter and say: You need to take that photo down,
12 and we -- let's try to settle this case so we can stay out of
13 court.

10:51 14 The defendant, before this case was ever filed, got that
15 letter. Magically the photograph disappeared off the Facebook
16 page. But when contact was made with the defendant, and that's
17 Mr. Jaber himself, he said: Don't have a Facebook page, never
18 been our Facebook page, don't know what that is. Yet somehow
19 the photo came down and yet somehow the Facebook page changed
20 from Villard Food Town to Food Town Mart, which is the name of
21 the store as it currently operates.

10:51 22 From there and continuing through this day, Mr. Jaber and
23 the defendant Nofal, LLC have had umpteen different
24 opportunities to tell the truth. They have chosen otherwise.

10:51 25 MR. STEINLE: Well, I'm going to object at this point,

1 Judge. That's for the jury's determination. He can state what
2 the facts, but that's conclusionary.

10:52

3 THE COURT: Understood. The jury has already been
4 instructed by the Court that what counsel say in opening
5 statements does not constitute evidence in the case. So you're
6 free, Mr. Steinle, to suggest otherwise and put Mr. DeSouza to
7 his proof. That's what we're here for.

10:52

8 MR. DESOUZA: At every -- at every opportunity in this
9 case, there's been an allegation, "This is your Facebook page."
10 Defendants have said, "No, it's not." The allegation has been,
11 "You put this photograph on your Facebook page." The
12 defendants have said, "No, we didn't." We have asked them,
13 "Identify all of your social media pages and websites." They
14 have said, "We have none." We have said, "Here's a photo from
15 the Facebook page. It shows the store itself. Please tell me
16 this is your store." "No, it's not. Absolutely not."

10:53

17 Now, as the Court just instructed and as Mr. Steinle
18 objected, I'm not providing you evidence. Each of you has
19 eyes. Each of you will see this evidence, and you will make a
20 determination is this their store, was this their Facebook
21 page? But you won't have to decide that yourself, and you
22 won't have to take my word for it because notwithstanding what
23 Mr. Jaber's testimony was throughout this lawsuit, you will
24 also hear from his son Amjad Hamed, who is a floor manager, or
25 at least he was about a year ago when he had his deposition

1 taken. And Mr. Hamed will testify, as he's testified already:

10:53 2 "Yes, this is our store's Facebook page. Yes, I put those
3 photos up there. Yes, I was responsible for the Facebook page.
4 Yes, the reason why we would say 2.99 a pound for pork chops is
5 because either my father or the butcher at the store told me
6 that's what the sale was. And, yes, my father unequivocally
7 knew about this Facebook page that I was running and prior to
8 me, my other brother, Nofal Hamed," -- which is the same as the
9 defendant the Nofal, LLC -- "he was running. And I have worked
10 at this store going back to 2020. My brother worked at this
11 store before me. I'm living at my father's house, living with
12 him," yet, the defendant in this case, defendants, Nofal, LLC
13 and Mr. Jaber, and -- they have testified -- I don't know
14 whether they will continue to do so -- have testified, "Not my
15 store -- or not my Facebook page, no idea what these photos
16 are, they're not my store."

10:54 17 Now, you will hear testimony about things that don't
18 involve this photograph. Other photos that are on the Facebook
19 page, things like hookahs that are for sale or speakers that
20 are for sale. And you may wonder, as the Court instructed you
21 earlier, you know, how -- how does all of this tie together?

22 But it will tie together, and the reason being is the items
23 that are on this Facebook page that show the store, items that
24 are for sale in the store, are all items that Mr. Jaber said,
25 "Absolutely not, we've never sold those things. That's not my

1 store. We don't do these things." And yet his son testified
2 completely contrary of, "Absolutely, we do sell those items.
3 We have sold those items. Yes, that's our store. Yes, I took
4 those photographs."

10:55 5 So you -- you will have to make a credibility determination
6 at the end of this case, unless Mr. Jaber wants to turn around
7 and say, "Oops, apparently I was mistaken for three years, I
8 was wrong," if he continues with his story that, "It's not my
9 store," you will have to make the determination: Is he telling
10 the truth? And has my client proved its case?

11 And to prove our case, we will need to tell you it's our
12 photograph, which they don't dispute. It's subject to a
13 copyright, which they don't dispute. But that it was on their
14 Facebook page, their social media, without our permission. I
15 think it's without dispute that it was without permission. You
16 will have to decide whether it was on their Facebook page or
17 not, has Mr. Jaber been telling the truth for the last three
18 years.

19 And if you determine that it was on their page and it was
20 without permission, you would have to decide, under the law,
21 what damages you will award against the defendants in this
22 case. Thank you.

10:56 23 THE COURT: Thank you, Mr. DeSouza.

10:56 24 Mr. Steinle.

10:56 25 MR. STEINLE: Thank you, your Honor.

10:56

1 May it please this Court, good morning, gentlemen. I am
2 Timothy Steinle. I represent the defendants in this particular
3 case. I would like to take just one second to thank you for
4 taking the time out that the Court indicated in the comments to
5 you how significant and important what you're doing here today
6 is. And on behalf of my clients, I would like to thank you for
7 your service today.

10:57

8 Factually, this case is not that difficult. This case is
9 not going to take that long because there are things that are
10 not in dispute. There is no dispute that it was their
11 photograph. There is no dispute that it was copyrighted. But
12 I think you have to -- and you will today and tomorrow -- get
13 the context of what this case is about.

10:57

14 What this case is about is it's about a small inner-city
15 grocery store in the City of Milwaukee. It's not a chain.
16 It's not Metro Mart. It's not Sendik's. It's one stand-alone
17 family-run grocery store in the City of Milwaukee. And it
18 dates back. It dates back, Mr. Jaber came to this country, and
19 what he did is he immediately gets a job or shortly thereafter
20 gets a job with Villard Food Town, 27th and Villard, Villard
21 Food Town. And the store's being run by his brother. And his
22 brother's name is Faraj. They call him Frank. That's --
23 that's his nickname. He's Frank.

10:58

24 The Jaber family is a very, very large family, and Frank's
25 running this store. And Sharif begins -- in 2004 begins

1 working for Frank. Things go along. He's the manager. Sharif
2 is the manager of this grocery store on behalf of his brother.
3 Because it's a large family-run business, what happens is in
4 2015, everything's going fine, he's the manager, there's no
5 issues.

10:59 6 In 20 -- in 2015, his son -- and don't confuse -- his son
7 Nofal comes into the business. And what Nofal does is Nofal's
8 experienced with the internet, experienced with social media.
9 And what Nofal's going to testify to is that he creates a
10 website. Excuse me. It wasn't website. That's significant.
11 He creates a Facebook page. And he creates the Facebook page
12 when his uncle is running the store Villard Food Town. And the
13 URL for this Facebook page is Villard Food Town, when he
14 creates the Facebook page. Nofal creates a Facebook page.

10:59 15 So he and his brother continue to talk. Sharif wants to
16 buy the business. And, in fact, Sharif buys the business in
17 2017. And he names the business -- he renames the business
18 Nofal, LLC and then changes the d/b/a from Villard Food Town to
19 Food Town Mart. He changes the d/b/a.

11:00 20 So what happens is Nofal continues to work there. There's
21 no issues at all. There's no problems. Sharif is running the
22 business. Nofal's managing the business. And what happens is
23 Nofal begins to wind down in 2020. And what happens in 2020 is
24 his other brother -- big family business -- his other brother
25 Amjad comes to the business in 2020, about. He knows it's

1 COVID. He comes in 2020.

11:00 2 And what happens is Nofal the son teaches his brother about
3 this Facebook page and teaches him about the fact that there's
4 this Facebook page for Villard Food Town. That's the URL,
5 Villard Food Town. Nothing had changed on that -- on that
6 Facebook page.

11:01 7 And what happens is this is Nofal's gone, Amjad takes over
8 the Facebook page. And what Amjad does is he posts one post on
9 September 28th in 2020, one post. And he posts a sale of food
10 items. And on that one Facebook page on September 28th of
11 2020, there is a picture of a pork chop. Amjad is going to
12 tell you how he set up that Facebook page. And he's going to
13 describe for you what he did to set up that Facebook page.

11:02 14 The post goes up on the 28th of September of 2020. Nothing
15 is heard. Nothing is heard. They go on with business. And
16 keep this in mind, too, this one Facebook page with this one
17 photograph is for a one-week sale of pork chops -- not
18 unlimited -- one-week sale of pork chops. And nothing is
19 heard, nothing is heard.

20 20 And Sharif is going to testify you that he did not receive
21 notice at all about any alleged infringement violation. The
22 first that he hears of it is in February of 2023 when he gets
23 sued for this violation. Sharif Jaber did not receive notice.
24 And the date of the notice is going to become really
25 significant, too. The date of the notice is November of 2021.

1 But the notice goes to, not Sharif Jaber, the notice goes to
2 Faraj Jaber, Frank Jaber. It doesn't go to Sharif Jaber.
3 Sharif didn't open his brother's mail. He's -- he knows
4 nothing about this alleged violation.

11:03

5 So what you are also going to hear is this, the boys are
6 going to testify to, is this: They did the Facebook page on
7 their own. Nofal's going to tell you he did it because he
8 thought, well, maybe it can help the business. I've got a
9 personal Facebook page, maybe it will help the business. He
10 didn't tell his dad. And he didn't tell his uncle. Keep in
11 mind, this Facebook page was set up under Villard Foods. He
12 didn't tell his Uncle Frank, and he didn't tell his dad. And
13 Amjad didn't tell his dad.

11:04

14 And the boys are going to testify. You're going to hear
15 them -- both of them testify. They're going to say, "We did
16 this on our own. We didn't talk to our dad. We didn't talk to
17 our uncle. They didn't give us any direction. They didn't
18 give us -- tell us what to put on the Facebook page."

11:04

19 And the other thing that I think is significant with what
20 you're going to hear is this: Facebook is not a website. It
21 is an incredibly limited social media site. Nofal's going to
22 testify to you that at the time of the post in September of
23 2028 (sic), they had 1,000 followers. That's it. And what
24 he's going to testify to is this: When you are on Facebook,
25 the only way that you can get access to the Facebook page is

1 one of two ways, you've got to do a search or you've got to
2 friend them or like them. And that's the only way that you're
3 going to get contact with the web -- with the Facebook page.

11:05

4 So, ladies and gentlemen, please listen to the testimony
5 carefully, because there are some of very significant disputes
6 about what was known, when was -- what was known, when it was
7 known, what information was provided. Because you are going to
8 have to decide whether or not Mr. Sharif Jaber knew, whether he
9 controlled the website. They have to prove he profited from
10 the use of this photograph. They have to prove that he
11 profited from the use of that photograph.

11:06

12 And at the end of the day, ladies and gentlemen -- at the
13 end of the day, this is what the evidence, the uncontroverted
14 evidence is this: We are in court today because we have been
15 sued for the use of one photograph on one occasion, one
16 photograph out of a library of 20,000. This photograph came
17 out of a library of 20 -- one photograph for a limited period
18 of time. And they have to prove to you that they were damaged
19 by the use of this one photograph on September 28th. That's
20 what we're doing here.

11:06

21 So again, ladies and gentlemen, I would like to thank you
22 in advance, kind of a unique case, kind of interesting in some
23 respects. You're going to hear some testimony. But -- but
24 please, ladies and gentlemen, I thank you in advance for your
25 attention. It's a very important case to my client. It's

1 important to the plaintiff, too. It's important. So I thank
2 you in advance. And, again, I look forward to it. Thank you.

11:07 3 THE COURT: Thank you, Mr. Steinle.

11:07 4 Mr. DeSouza, you may call your first witness.

11:07 5 MR. DESOUZA: Your Honor, the plaintiff calls Rebecca
6 Jones.

11:07 7 THE CLERK: Please stand. Stand and raise your right
8 hand.

11:07 9 (The witness is sworn.)

11:07 10 THE WITNESS: I do.

11:07 11 THE CLERK: Thank you. Please be seated. Please
12 state your full name and spell it for the court reporter.

11:08 13 THE WITNESS: Rebecca, R-E-B-E-C-C-A, Jones,
14 J-O-N-E-S.

11:08 15 REBECCA JONES,
11:08 16 called by the Plaintiff as a witness herein, having been first
17 duly sworn, was examined and testified as follows:

11:08 18 DIRECT EXAMINATION

11:08 19 BY MR. DESOUZA:

11:08 20 Q. Good morning, Ms. Jones.

11:08 21 A. Good morning.

11:08 22 Q. Ms. Jones, do you have some affiliation with the plaintiff
23 in this case, Prepared Food Photos?

11:08 24 A. I do.

11:08 25 Q. And what affiliation is that?

11:08 1 A. They're my employer. I'm the intellectual property
2 director for PFP.

11:08 3 Q. What does that mean, you're the intellectual property
4 director?

11:08 5 A. So I take care of making sure that all of our images and
6 everything in our library is copyrighted and I oversee a team
7 who works to make sure that those copyright rights are
8 protected.

11:08 9 Q. Okay. And what is the business of Prepared Food Photos?

11:08 10 A. We have a library that we license to our subscribers.

11:08 11 Q. How many images are we talking about?

11:09 12 A. A little bit more than 18,000.

11:09 13 Q. Are those 18,000 images that Prepared Food created today,
14 yesterday, how did it go about getting these photos?

11:09 15 A. It was over the course of a couple of decades to amass that
16 library.

11:09 17 Q. Who created the images? Are these images that you bought
18 from someone else?

11:09 19 A. No, these -- these images were all created in house by
20 staff chefs in our -- we had a studio with a kitchen. We had
21 photograph -- staff photographers. We have people who work on
22 color separation, color specialists, to make sure that the
23 images say the same whether they're used in print or digital.
24 And then attorneys that we had to hire to copyright the images.

11:09 25 Q. When you say you created the images in house, is there a

1 physical location from which the images were created?

11:10 2 A. Yes. We had a physical kitchen and studio for the
3 photography. We had food stylists who would plate the images,
4 make sure they looked appealing.

11:10 5 Q. Does PFP have a website?

11:10 6 A. We do.

11:10 7 Q. And describe the website to me. What can I do on the PFP
8 website?

11:10 9 A. You can view the library. There are categories of
10 different, I don't know, like meat or vegetables or desserts.
11 You can view all the images on the library so that you know if
12 you want to become a subscriber what you'll be getting.

11:10 13 Q. Ms. Jones, I would like to show you what's been marked as
14 Plaintiff's Exhibit 22 today.

11:10 15 MR. DeSOUZA: And, your Honor, I don't know if you
16 want to control if it's being seen or not, but it's already on
17 the screen. Is that okay?

11:10 18 THE COURT: Certainly.

11:10 19 MR. DeSOUZA: Okay.

11:10 20 A. No. 22.

11:10 21 BY MR. DeSOUZA:

11:11 22 Q. Ms. Jones, up on the screen is Plaintiff's Exhibit 22. Do
23 you see that?

11:11 24 A. I do.

11:11 25 Q. And do you recognize what this document is?

11:11 1 A. Yes. That's a --
11:11 2 Q. Can you tell the jury what it is.
11:11 3 A. That's a -- it appears to be a screenshot of our home page.
11:11 4 Q. Okay. And at the -- at the very top of the image, it looks
11:11 5 like there's a URL up here. Do you see that?
11:11 6 A. I do.
11:11 7 Q. Can you tell me what that URL is?
11:11 8 A. PreparedFoodPhotos.com.
11:11 9 Q. Okay, perfect. At the very bottom of the page, it looks
11:11 10 like there's some notation here that says, Captured by FireShot
11:11 11 Pro. Do you see that?
11:11 12 A. I do.
11:11 13 Q. Okay. Can you tell us what that is, what is FireShot Pro?
11:11 14 A. FireShot Pro is a Google Chrome extension that we use.
11:11 15 Because we use Mac computers, when you take a screenshot it
11:11 16 doesn't put the date and time on the screenshot. FireShot Pro
11:11 17 puts the date and time as well as the URL.
11:11 18 Q. Okay. And what's the date this screenshot was captured?
11:12 19 A. It looks like October 1st, 2024.
11:12 20 Q. And is this an accurate depiction of what the Prepared Food
11:12 21 Photos website looks like in October, 2024?
11:12 22 A. Absolutely.
11:12 23 MR. DeSOUZA: Your Honor, I would ask that Plaintiff's
11:12 24 Exhibit 22 be admitted into evidence.
11:12 25 THE COURT: All right. Without objection, the Court

1 will receive Exhibit 22.

11:12 2 (Exhibit No. 22 was received in evidence.)

11:12 3 BY MR. DeSOUZA:

11:12 4 Q. Now, Ms. Jones, I see there's various categories here in
5 the middle of the page. Can you tell me what -- what am I
6 looking at here in the middle of the page?

11:12 7 A. It's just a way for anyone who is on the site, if -- you
8 know, if they are looking for a picture of produce, they don't
9 have to scroll through the entire site. They can -- there's a
10 search bar they can use, or they can just click on the produce
11 section and go through there.

11:12 12 Q. And are all of your -- I think you said greater than 18,000
13 images hosted on the website?

11:12 14 A. Yes.

11:13 15 Q. Other than offering images to your subscribers, as you
16 said, does PFP have any other line of business?

11:13 17 A. No.

11:13 18 Q. So if PFP is making money, it is from offering
19 subscriptions to its subscribers?

11:13 20 A. Yes.

11:13 21 Q. Okay. At the very top here, I see language that says,
22 "Exclusive brand building supermarket images." Do you see
23 that?

11:13 24 A. I do.

11:13 25 Q. What does that mean?

11:13 1 A. That means that we -- one of the draws to our library is
2 that all of these images have been created under the same
3 direction by staff photographers so that that they all have a
4 very similar look, feel, the style, the angles that are used,
5 the color palates that's used, it's all pretty much the same
6 across the board. So rather -- if you're trying to attract new
7 customers or keep your -- your customers that you already have,
8 you want brand recognition, and so we help with that.

11:14 9 Q. Okay. Now, I see just under this orange button it looks
10 like it says, "Unlimited downloads for only \$999 a month"?

11:14 11 A. Correct.

11:14 12 Q. Is that -- did I read that right?

11:14 13 A. Yes.

11:14 14 Q. And is that -- well, I guess, tell me what that means. Is
15 it a pricing structure that you have adopted?

11:14 16 A. Yes. That's the price of our subscription per month with a
17 minimal -- excuse me, an initial -- oh, my gosh -- initial term
18 of one year. And when -- for as long as you're a subscriber,
19 you are allowed to download. You can download the entire
20 18,000 if you have the space and capacity. But -- and unlike
21 other stock photography sites, you don't have to keep track of
22 how many impressions or how many times you've used it and what
23 media.

11:15 24 Q. All right. Ms. Jones, I put up on the screen what we've
25 identified as Plaintiff's Exhibit 23. This appears to be

1 another subpage of the Prepared Food Photos website; is that
2 correct?

11:15 3 A. Yes.

11:15 4 Q. And can you tell me what subpage this is?

11:15 5 A. I believe that's under pricing.

11:15 6 Q. Okay. And does that appear to be an accurate photo of how
7 PFP's website looks on the pricing page?

11:15 8 A. Yes.

11:15 9 MR. DeSOUZA: Your Honor, I would ask that Plaintiff's
10 Exhibit 23 be admitted into evidence.

11:15 11 THE COURT: All right. The Court will receive Exhibit
12 23.

11:15 13 (Exhibit No. 23 was received in evidence.)

11:15 14 BY MR. DeSOUZA:

11:15 15 Q. All right. Ms. Jones, you were saying it's 999 a month,
16 and I think you said it was a minimum period of time; correct?

11:15 17 A. Yes.

11:15 18 Q. And what is that minimum period of time?

11:16 19 A. It says on there 12-month subscription term.

11:16 20 Q. Okay. So you have to sign up for at least 12 months is
21 what you're saying?

11:16 22 A. Correct.

11:16 23 Q. Why not just allow someone to sign up today and cancel
24 tomorrow?

11:16 25 A. Because they would download the entire library -- or they

1 could download the entire library and take all 18,000 images.
2 This allows us to make sure that our images are being used with
3 authorization by clients and customers that we have control
4 over so that we can make sure there's not market saturation so
5 that a competitor down the street isn't using the same images
6 that you're trying to use to market and create that brand
7 identity.

11:16 8 Q. Can I license -- I guess, can anyone go on your website and
9 license a single photograph?

11:16 10 A. No.

11:16 11 Q. Why not?

11:16 12 A. That's not our subscription model.

11:17 13 Q. So the only thing you offer is the subscribe to your entire
14 library, no individual photos?

11:17 15 A. Correct.

11:17 16 Q. Okay. And how long has that been the case, like going back
17 to till when?

11:17 18 A. 2016.

11:17 19 Q. Okay. So at least as of 2016, the only customers that you
20 have had have been subscribers to your entire library?

11:17 21 A. Yes.

11:17 22 Q. And who are Prepared Food Photos' customers, like in
23 general, what are their industries that they're in?

11:17 24 A. We have a lot of grocery store clients. We have some
25 national food delivery services. We also have marketing

1 companies and advertising agencies.

11:17 2 Q. And do you keep track of who those subscribers are?

11:17 3 A. Yes.

11:17 4 Q. Why -- well, I guess is it important for you to keep track
5 of who they are?

11:17 6 A. It's essential.

11:17 7 Q. Why is that? Is that for the reason you were just
8 describing about brand identity?

11:17 9 A. Yes, the brand identity. We offer semi-exclusivity where
10 because as part of the terms of use when you sign up, you have
11 to provide us with a list of your clients. And so we monitor
12 that to make sure that, you know, Grocery Store A and Grocery
13 Store B, which might be two blocks down the road, are not using
14 the same picture on their Thanksgiving Day ad and one's paying
15 for it and the other one's not or we just make sure that your
16 store is identified easily by the pictures you use.

11:18 17 Q. You -- you mentioned categories of people that -- excuse me
18 -- businesses that are your clients. But can you disclose to
19 the jury who any of your subscribers actually are?

11:18 20 A. Sure. We have GrubHub as one of our subscribers, Slice
21 which is similar to GrubHub but they focus only on pizza. And
22 then we have a couple of different grocery stores across the
23 country that might have a couple of locations. Some only have
24 one or two. Some are larger. I think we have one in Florida,
25 one in Ohio, maybe one in Illinois. And then a couple of

1 various other advertising and marketing companies.

11:19 2 Q. And do those advertising and marketing companies themselves
3 have grocery store clients for which they design ads for?

11:19 4 A. Absolutely.

11:19 5 Q. Okay. So are you able to guess or estimate just how many
6 grocery stores are ultimately using your photos with
7 permission?

11:19 8 A. I wouldn't know off the top of my head, unfortunately.

11:19 9 Q. Okay. Now, of the ones that you've identified or of the
10 subscribers that you're aware of, is everyone paying the same
11 \$999 a month plan that's up on the screen?

11:19 12 A. No, that's the minimum.

11:19 13 Q. Okay. What do you mean by that? There are people that pay
14 more than 999 a month?

11:19 15 A. Yes. The larger national companies, they pay more.

11:20 16 Q. Okay. Is GrubHub one of those companies that pays more
17 than 999 a month?

11:20 18 A. Yes.

11:20 19 Q. And is that, as you said, because of the size of their
20 distribution?

11:20 21 A. Exactly.

11:20 22 Q. The income that PFP receives from its subscribers, does PFP
23 depend on that income to stay in business?

11:20 24 A. Yes.

11:20 25 Q. Okay. I think you said there's no other line of business.

1 PFP doesn't sell golf clubs. It doesn't do anything other than
2 offer its photos for subscription; correct?

11:20 3 A. Correct.

11:20 4 Q. How many employees does PFP have?

11:20 5 A. A half a dozen.

11:20 6 Q. Half a dozen?

11:20 7 A. Yeah.

11:20 8 Q. And are all of those employees involved in the area of
9 business that you described earlier?

11:20 10 A. Yes.

11:20 11 Q. Ms. Jones, we're obviously in a lawsuit against the
12 defendants in this case. Tell the jury why you filed this
13 lawsuit. What's -- what's the reason why we're all here today?
11:20 14 A. Because the defendant has continually denied responsibility
15 for this and has continually lied and refused to participate in
16 any type of a settlement discussion.

11:21 17 MR. STEINLE: Well, I object and ask that the answer
18 be stricken. The purpose of a reason why she filed a lawsuit
19 has nothing to do with the factual determination in this
20 particular case.

11:21 21 THE COURT: Yeah. We've been through this, Mr.
22 DeSouza, in your opening statements. You can ask the witness
23 factual questions. Whether somebody lied or didn't lie is not
24 a matter for this witness to give fact. The facts are going to
25 be determined by the jury, not your witness.

11:21 1 MR. DeSOUZA: Understood, your Honor. I'll -- I'll
2 ask a different way to get a different answer from her.

11:21 3 BY MR. DeSOUZA:

11:21 4 Q. Ms. Jones, this lawsuit, does it involve one or more of
5 Prepared Food Photos' photographs?

11:21 6 A. Yes.

11:22 7 Q. Okay. And what is Prepared Food Photos alleging the
8 defendants did here?

11:22 9 A. Used our image without authorization or licensing.

11:22 10 Q. Okay. And what image are we talking about?

11:22 11 A. It's a picture of boneless center cut pork chops, raw
12 boneless pork chops.

11:22 13 Q. Okay. Ms. Jones, I'm going to put on the screen what's
14 been identified as Plaintiff's Exhibit 1. Okay? Do you see
15 that on the screen?

11:22 16 A. I do.

11:22 17 Q. Okay. Is Plaintiff's Exhibit 1 the photograph that
18 Prepared Food Photos is alleging was used by the defendants
19 without permission?

11:22 20 A. Yes.

11:22 21 Q. Okay. And this is a photograph that is owned by Prepared
22 Food Photos?

11:22 23 A. Yes.

11:22 24 MR. DeSOUZA: Your Honor, I would ask that Plaintiff's
25 Exhibit 1 be admitted into evidence.

11:22

1 MR. STEINLE: No objection.

11:22

2 THE COURT: All right. The Court will receive Exhibit
3 .

11:22

4 (Exhibit No. 1 was received in evidence.)

11:22

5 BY MR. DeSOUZA:

11:23

6 Q. Okay. Ms. Jones, how was this photograph created?

11:23

7 A. It was created in our studio. We have food stylists. So
8 under the direction of either the creative director or
9 management team, we would decide what needed to be
10 photographed. Obviously, this is not cooked, so the chef
11 didn't cook this. But the food stylist would arrange it. The
12 photographer, staff photographer, would take pictures of it
13 through various angles and maybe turn the cutting board a
14 little bit after the food stylist had arranged everything nice
15 and neat on the cutting board.

11:23

16 And then after the photograph is taken, the color
17 specialist would go through and make sure that the colors look
18 right and do any editing or anything if there's shadow
19 somewhere that they don't want, take those out. Then there's
20 another process that they go through to, like I said before,
21 make sure the color stays the same whether it's used on print
22 or digital. And then it would be submitted for copyright
23 registration.

11:24

24 Q. Okay. And this particular photograph, is this one that is
25 included in the 18,000 or so photographs that if I were a

1 subscriber I would gain access to?

11:24 2 A. Yes.

11:24 3 Q. Is this photo on the PFP website -- I'm sorry, by PFP I
4 mean Prepared Food Photos. Is it okay if I shorten it down?

11:24 5 A. I do not, I do it all the time.

11:24 6 Q. Okay. Is this a photograph that's included on your website
7 that someone can go and find?

11:24 8 A. Yes.

11:24 9 Q. Okay. So what I'm going to do, Ms. Jones, is I'm going to
10 show you what we've marked as Plaintiff's Exhibit 24.

11:24 11 THE COURT: Mr. DeSouza, before we move, Ms. Jones,
12 can you tell the jury when this photograph was taken?

11:24 13 THE WITNESS: I would have to look at the deposit
14 material or the copyright certificate to -- I don't know it off
15 the top of my head.

11:25 16 THE COURT: Well, before you conclude your testimony,
17 we're going to get an answer to that question.

11:25 18 THE WITNESS: I can tell you, Judge, all of the images
19 in our library were copyrighted by 2017.

11:25 20 THE COURT: Now, that wasn't my question.

11:25 21 THE WITNESS: Okay.

11:25 22 THE COURT: My question is when was this photo
23 taken --

11:25 24 THE WITNESS: All right.

11:25 25 THE COURT: -- not when it was copyrighted, when it

1 was taken.

11:25 2 THE WITNESS: I understand.

11:25 3 THE COURT: There's been suggestion that it was
4 actually taken 20 years earlier.

11:25 5 MR. DeSOUZA: And I'll cover that with her, your
6 Honor, when I look at the copyright registration certificate.
7 If it's okay, I'll make sure that I cover it in our next
8 exhibit here.

11:25 9 THE COURT: Very well.

11:25 10 BY MR. DeSOUZA:

11:25 11 Q. Ms. Jones, I have put up on the screen what's been
12 identified as Plaintiff's Exhibit 24. Do you see that there?

11:25 13 A. I do.

11:26 14 Q. And can you tell me, what is Plaintiff's Exhibit 24?

11:26 15 A. It's the same picture but on our website.

11:26 16 Q. Okay. So if I go to your website, how would I go about
17 finding this photo?

11:26 18 A. You could either go to the category where there's meat or
19 pork, or you could do a search, that box where it says "search
20 images," and you could put in the words, you know, if you were
21 looking for a picture of raw pork chops or boneless center cut
22 pork chops, go through the images, select the one.

11:26 23 Q. Now, if I'm not a subscriber, I can still go to your
24 website and see this photo; correct?

11:26 25 A. Correct.

11:26 1 Q. Am I allowed to download this photograph off your website
2 if I'm not a subscriber?

11:26 3 A. Not legally, no.

11:26 4 Q. Okay. I see there's something at the top right there that
5 says "download photo"?

11:26 6 A. Uh-huh.

11:26 7 Q. Is there any way for me just to download this photo from
8 your website if I'm not a subscriber?

11:26 9 A. Not that I'm aware of, no. It says right underneath that,
10 "To download images, subscribe here."

11:27 11 Q. So I'd have to click over here in order to subscribe and
12 become authorized?

11:27 13 A. Right. And once you're subscribed and you're logged into
14 your account, then there would be a download button.

11:27 15 Q. Okay. Now, you testified that this image or at least one
16 of the things you do is copyright some of these images with the
17 copyright office; correct?

11:27 18 A. Correct.

11:27 19 Q. For those members of the jury that aren't involved in
20 copyright, describe what that process is like. How does one
11:27 21 copyright an image?

11:27 22 A. So there's an application, the electronic copyright office
23 website. You'd fill out the application. There's multiple
24 steps for that. You pay a fee, submit your application. Along
25 with the application, you also have to provide them with a list

1 of images that are on that registration application, provide
2 them with photos of every image that you want included in that
3 registration. There's a description, also, along with that.
4 And then it's submitted to the copyright office. There's an
5 examiner who reviews all the materials, makes sure that
6 everything meets their requirements. And if it does, then you
7 receive in the mail your copyright certificate.

11:28 8 MR. DeSOUZA: Okay. Before I forget, Ms. Jones, your
9 Honor, I'd ask that Exhibit 24 be moved into evidence.

11:28 10 THE COURT: All right. The Court will receive Exhibit
11 24.

11:28 12 (Exhibit No. 24 was received in evidence.)

11:28 13 BY MR. DeSOUZA:

11:28 14 Q. All right. Ms. Jones, you just described the process to go
15 through to get the images registered with the copyright office;
16 correct?

11:28 17 A. Yes.

11:28 18 Q. Have you done this process previously?

11:28 19 A. Yes.

11:28 20 Q. Is the photograph we're looking at here, the pork chops,
21 subject to a US Copyright Registration?

11:28 22 A. Yes.

11:28 23 Q. Okay. Ms. Jones, I'm going to show you what we've marked
24 as Plaintiff's Exhibit 2, which is a document that says
25 "Certificate of Registration." It says United States Copyright

1 Office, and it has a registration number of VA2-027-172. Do
2 you see that?

11:29 3 A. I do.

11:29 4 Q. Okay. Ms. Jones, what are we looking at here? Is this the
5 registration for the photo at issue or something else?

11:29 6 A. No. This appears to be a scan of the certificate that
7 we received from the copyright office.

11:29 8 Q. Okay. And this is a seven-page document, it appears to be;
9 is that right?

11:29 10 A. Yes.

11:29 11 Q. Okay. Ms. Jones, I'm going to go to Page 4 of this
12 document. And do you see the photograph that is at issue in
13 this case identified on this certificate?

11:29 14 A. I do.

11:29 15 Q. Okay. Where is it?

11:29 16 A. It's RawPorkChopCCBNLS005_ADL.

11:30 17 Q. Okay. And there's also a date -- well, it appears to be a
18 date next to it. Do you see that?

11:30 19 A. I do.

11:30 20 Q. What does that date mean --

11:30 21 A. That would --

11:30 22 Q. -- to your knowledge?

11:30 23 A. That would be the date of creation of the image.

11:30 24 Q. Okay. So when the Court asked you earlier when was this
25 photo created and you didn't know, does this certificate help

1 you figure out when the photo was taken?

11:30 2 A. Yes.

11:30 3 Q. Okay. And it's when, in October of 1997?

11:30 4 A. Yes.

11:30 5 Q. Okay. And it looks like as I scroll up or down, most, if
6 not all, of these photos all appear to have a 1997 date; does
7 that seem correct to you?

11:30 8 A. Yes, they have to.

11:30 9 Q. And when we see here -- go ahead and read this line for me
10 as to how this is described here.

11:30 11 A. "Group registration of photos published 1/4/1997 through
12 12/5/1997; about 250 photos total."

11:30 13 Q. Okay. So, Ms. Jones, is this the US Copyright Certificate
14 that pertains to the photograph at issue in this case, among
15 other photos?

11:31 16 A. Yes.

11:31 17 MR. DeSOUZA: Okay. Your Honor, I would ask that
18 Plaintiff's Exhibit 2 be moved into evidence.

11:31 19 MR. STEINLE: There is --

11:31 20 THE COURT: All right. The Court will receive Exhibit
21 2.

11:31 22 (Exhibit No. 2 was received in evidence.)

11:31 23 BY MR. DeSOUZA:

11:31 24 Q. Ms. Jones, has either of the defendants in this case,
25 whether it's Nofal, LLC doing business as Food Town Mart or Mr.

1 Jaber, ever subscribed to PFP's library of photographs?

11:31 2 A. No.

11:31 3 Q. Have either of the defendants ever reached out to PFP to
4 inquire about subscribing to the library of photographs?

11:31 5 A. No.

11:31 6 Q. Have you ever received any correspondence or communications
7 from the defendants just asking about your photographs?

11:31 8 A. No.

11:32 9 Q. Now, the allegation in this case, as you said earlier, is
10 that the defendants, one or both of them, used the photograph
11 without permission; correct?

11:32 12 A. Yes.

11:32 13 Q. When did you first find out about this?

11:32 14 A. I believe it was October of 2021.

11:32 15 Q. Okay. And how do you find out? Are you in their store,
16 are you walking around, how do you come to the conclusion that
17 one of these defendants is using your photograph without
18 permission?

11:32 19 A. We do a Google reverse image search.

11:32 20 Q. What does that mean, for the less technically inclined?

11:32 21 A. So on Google, you can go up on the right corner, it says
22 images. You click that, and you're able to drag and drop into
23 the search bar a JPG or whatever of an image, and Google will
24 scour the internet, return results that are either your image
25 or visually similar images where that image was used.

11:33 1 Q. And then based on those results, you determined that one of
2 these defendants was using the photograph?

11:33 3 A. Yes.

11:33 4 Q. Okay. Why -- why are you doing these -- well, I guess why
5 did you do this Google reverse image search presumably of the
6 photograph at issue in this case; right?

11:33 7 A. Right.

11:33 8 Q. So why are you doing this search?

11:33 9 A. As a way to protect our images, our intellectual property.
10 And like I had mentioned before about the brand exclusivity
11 that we offer out clients, we need to make sure that our images
12 are only being used by our licensed paid subscribers.

11:33 13 Q. Okay. And is this a process that you typically follow
14 searching -- is it just the pork chop photo or is it all your
15 images that you're searching for?

11:33 16 A. It is all 18,000 images.

11:33 17 Q. Okay. And there's a person that's tied to a computer and
18 has to do this --

11:33 19 A. Yes.

11:33 20 Q. -- looking for these images?

11:34 21 A. Yes. Yep. We have a couple of researchers who do this
22 research.

11:34 23 Q. Okay. But at some point in time -- and I think you said
24 roughly October, 2021 -- you came to the conclusion or found
25 what appears to be an unauthorized use of this pork chop photo;

1 correct?

11:34 2 A. Correct.

11:34 3 Q. Okay. What did you do upon that discovery? What's the
4 next step once you discovered this?

11:34 5 A. We took one of those FireShot screenshots.

11:34 6 Q. Okay. You took a screenshot?

11:34 7 A. Yes.

11:34 8 Q. All right. Ms. Jones, I will show you what we have
9 identified as Plaintiff's Exhibit 5. I'll blow it up so you
10 can see it.

11:34 11 A. Uh-huh.

11:34 12 Q. Is Plaintiff's Exhibit 5 the screenshot that was taken upon
13 your discovery?

11:34 14 A. Yes.

11:34 15 Q. Okay. And who took this screenshot?

11:34 16 A. Either I did or one of my associate -- my researchers.

11:35 17 Q. Okay. Now, much like the other screenshot we're looking
18 at, there is a URL at the top here; correct?

11:35 19 A. Yes.

11:35 20 Q. Tell me what the URL is.

11:35 21 A. www.facebook.com/villardfoodtown and then slash question
22 mark reference equals page underscore internal.

11:35 23 Q. Okay. But we have a -- I suppose a Facebook account that
24 is named name Villard Food Town; correct?

11:35 25 A. Yes.

11:35 1 Q. Okay. And at the bottom of the page, we also have a date
2 as to the date of this screenshot; correct?

11:35 3 A. Yes.

11:35 4 Q. And that says what? What's the date?

11:35 5 A. November 22nd, 2021.

11:35 6 Q. Okay. So is that roughly when this screenshot was taken?

11:35 7 A. Yes.

11:35 8 Q. As I say roughly, but there's a specific time hereof 9:49
9 a.m. and 59 seconds; correct?

11:35 10 A. Yes.

11:35 11 MR. DeSOUZA: Okay. Your Honor, I would ask that
12 Plaintiff's Exhibit 5 be moved into evidence.

11:35 13 MR. STEINLE: Well, I do object to the introduction of
14 that, improper foundation. The URL is Villard Food Town. The
15 Villard Food Town is not on trial here.

11:36 16 THE COURT: Well, that's a good point for you to raise
17 with the jury, Mr. Steinle. This is plaintiff's case. If --
18 there's no reason not to receive it if it benefits your client.

11:36 19 The objection is overruled. The Court will receive Exhibit
20 5.

11:36 21 (Exhibit No. 5 was received in evidence.)

11:36 22 BY MR. DeSOUZA:

11:36 23 Q. All right. Ms. Jones, you said this was the Facebook page
24 you discovered that had the -- your photograph on it; correct?

11:36 25 A. Correct.

11:36 1 Q. And I'm assuming -- well, actually, you tell me. Is it
2 this screenshot that we're looking at here that appears to be
3 September 28th, 2020?

11:36 4 A. Yes. That appears to be the post date.

11:36 5 Q. All right. Well, there's three photographs here. I think
6 I know which photo we're talking about. But which photo are
7 you contending is the PFP photo?

11:37 8 A. The larger photo on top of the raw pork chops.

11:37 9 Q. Okay. As you are familiar with your own photograph and you
10 look at this photograph, is there any doubt in your mind we're
11 looking at two of the same?

11:37 12 A. It's the same photograph.

11:37 13 Q. Okay. Now, the name of this account, as you see, is
14 Villard Food Town; correct?

11:37 15 A. Correct.

11:37 16 Q. And the post, the actual post, has that same name,
17 correct --

11:37 18 A. Yes.

11:37 19 Q. -- Villard Food Town?

11:37 20 A. Yes.

11:37 21 Q. Okay. And with respect to -- well, I guess there's some
22 text together with the photographs; correct?

11:37 23 A. Yes.

11:37 24 Q. Are you able to read that, or do you want me to blow that
25 up a little bit?

11:37 1 A. No, I can read it.

11:37 2 Q. Okay. Let's go ahead and read the text for me. What does

3 it say?

11:37 4 A. "Fresh chicken drumsticks \$0.99 a pound, fresh pork spare

5 ribs \$1.99 a pound, fresh boneless cut pork chops \$2.29 a

6 pound."

11:38 7 Q. Okay. So someone is using the PFP photo of pork chops to

8 advertise the sale of pork chops at 2.99 a pound -- I'm

9 sorry --

11:38 10 A. 2.29.

11:38 11 Q. -- 2.29 a pound; correct?

11:38 12 A. Yes.

11:38 13 Q. Okay. And what do you do after you've taken this

14 screenshot?

11:38 15 So you've got your screenshot. You believe someone's using

16 your photo without permission. What comes next?

11:38 17 A. We contact your firm.

11:38 18 Q. My firm?

11:38 19 A. Yes.

11:38 20 Q. Okay. And what happens then?

11:38 21 A. You -- an infringement letter is sent -- a letter is sent

22 out informing the alleged infringer of the use.

11:38 23 Q. Okay. So, Ms. Jones, I'm going to show you what we've

24 marked as Plaintiff's Exhibit 6. Do you see that on the

25 screen?

11:38 1 A. I do.

11:38 2 Q. And do you recognize this document?

11:38 3 A. I do.

11:39 4 Q. Tell me what it is we're looking at here.

11:39 5 A. This would be the letter that was prepared and sent.

11:39 6 Q. Okay. So when you said a letter was sent to the infringer,

11:39 7 it's this letter we're looking at?

11:39 8 A. Yes.

11:39 9 Q. And that's from my law firm; is that correct?

11:39 10 A. Yes.

11:39 11 Q. Okay. And what's the date of this letter?

11:39 12 A. November 22nd, 2021.

11:39 13 MR. DeSOUZA: Okay. Your Honor, at this time I would

11:39 14 ask that Plaintiff's Exhibit 6 be moved into evidence.

11:39 15 THE COURT: All right. The Court will receive Exhibit

11:39 16 6.

11:39 17 (Exhibit No. 6 was received in evidence.)

11:39 18 BY MR. DeSOUZA:

11:39 19 Q. Ms. Jones, I see that this is sent to Villard Food Town,

11:39 20 LLC, which is not the defendants in this case, Attention Faraj

11:39 21 Jaber; correct?

11:39 22 A. Yes.

11:39 23 Q. And there's an address of 3127 West Villard Avenue. Where

11:39 24 is that address coming from, the 3217?

11:39 25 A. From the Facebook page.

11:39 1 Q. It's coming from the Facebook page itself?

11:39 2 A. Yes.

11:40 3 Q. Okay. Let me take this down, Ms. Jones, and let me show

11:40 4 you what we'll identify as Plaintiff's Exhibit 10.

11:40 5 All right. Facebook -- I'm sorry, Plaintiff's Exhibit 10

11:40 6 is another Facebook page; correct?

11:40 7 A. Yes.

11:40 8 Q. And is this this -- is this another screenshot that you or

11:40 9 some member of your team captured?

11:40 10 A. Yes.

11:40 11 Q. And is it a screenshot of the same Villard Food Town

11:40 12 Facebook account when you see in the URL?

11:40 13 A. Yes.

11:40 14 MR. DeSOUZA: Okay. Your Honor, I would ask that

11:40 15 Plaintiff's Exhibit 10 be moved into evidence.

11:40 16 THE COURT: All right. The Court will receive Exhibit

11:40 17 10.

11:40 18 (Exhibit No. 10 was received in evidence.)

11:40 19 BY MR. DeSOUZA:

11:40 20 Q. Okay. Tell me what -- tell me what Exhibit 10 is, Ms.

11:40 21 Jones.

11:40 22 A. It's a screenshot of the initial landing page I guess you

11:40 23 would call it when you go on to this business' Facebook page.

11:41 24 Q. Okay. And is there an address that is published with

11:41 25 respect to this store?

11:41 1 A. Yes.

11:41 2 Q. And what's the address?

11:41 3 A. 3217 West Villard Avenue, Milwaukee, Wisconsin.

11:41 4 Q. Is that the address that you received with respect to

11:41 5 sending that letter out to the alleged infringer?

11:41 6 A. Yes.

11:41 7 Q. Okay. Now, there is also -- I guess there's a picture of

11:41 8 some store that says, "You're Someone Special," here. Do you

11:41 9 see that?

11:41 10 A. I do.

11:41 11 Q. And are you familiar with this photo or at least what's

11:41 12 being depicted in the photo?

11:41 13 A. Yes.

11:41 14 Q. What is that?

11:41 15 A. That's the front of the Food Town Mart store.

11:41 16 Q. How do you know that?

11:41 17 A. Because I was there yesterday.

11:41 18 Q. Okay. And that's what it looks like?

11:41 19 A. Yes.

11:41 20 Q. Does that "You're Someone Special" appear on the front of

11:41 21 the store?

11:41 22 A. It does.

11:41 23 Q. And just to be clear, were you at 3217 West Villard,

11:41 24 Milwaukee, Wisconsin?

11:42 25 A. Yes. That's the address my GPS took me to.

11:42 1 Q. Okay. So you send this letter to 3217 West Villard, and
2 that's going back to Plaintiff's Exhibit 6; correct?

11:42 3 A. Yes.

11:42 4 Q. Why is this letter being sent? What's the point?

11:42 5 MR. STEINLE: Well, I object to that, Judge. That's
6 improper foundation. There's no foundation that she drafted
7 the letter. It was drafted by counsel. And I don't know how
8 she can testify as to why the letter's being sent.

11:42 9 THE COURT: Yeah. Yeah, the objection is well taken,
10 Mr. Steinle, and sustained.

11:42 11 BY MR. DeSOUZA:

11:42 12 Q. Okay. Ms. Jones, do you -- as the intellectual property
13 director, do you provide guidance to any of the law firms that
14 you work with with respect to notifying an infringer of an
15 alleged infringement?

11:42 16 A. Absolutely.

11:42 17 Q. Okay. And as the intellectual property director, do you
18 have goals that you seek to accomplish by notifying an
19 infringer?

11:43 20 A. Yes.

11:43 21 Q. Okay. What are your goals in notifying an infringer of an
22 alleged infringement?

11:43 23 A. We have two goals basically. No. 1 is to let them know
24 that we know they're using the image and ask them to take it
25 down. And No. 2 is to ask for some kind of compensation for

1 that unauthorized use.

11:43 2 Q. Why ask for compensation?

11:43 3 A. Because it damages our reputation, our relationship with
4 our clients. And we're telling our clients that we're offering
5 them some exclusivity, and if somebody else is -- and they're
6 paying a good amount of money for that. And if somebody else
7 is using this image without having paid for it, without
8 authorization, without licensing, without permission, then it's
9 just -- it's just not right.

11:44 10 Q. Now, you've seen this letter before; correct?

11:44 11 A. Yes.

11:44 12 Q. And does this letter identify both your photograph and the
13 alleged infringement?

11:44 14 A. Yes.

11:44 15 Q. Okay. So if I scrolled down, that's your photograph;
16 correct?

11:44 17 A. Correct.

11:44 18 Q. And underneath that, it explains that the photograph was
19 registered with the Register of Copyrights, and that's the same
20 number we were just looking at on the certificate; correct?

11:44 21 A. Yes.

11:44 22 Q. Okay. And then what are you doing here? You're providing
23 -- is this the URL --

11:44 24 A. Yes.

11:44 25 Q. -- for the screenshot we just looked at?

11:44

1 A. Yes.

11:44

2 Q. And is that the screenshot itself that we were just looking
3 at as well?

11:44

4 A. Correct.

11:44

5 Q. Okay. Now, there's some text, there's some case law. It
6 looks like you're asking for a certain amount of money here.
7 How much money were you asking for before this lawsuit was
8 filed?

11:45

9 A. \$30,000.

11:45

10 Q. Okay. How do we get to \$30,000? What's the -- what's the
11 rationale for you asking for 30,000?

11:45

12 A. Because of our subscription model where it's basically a
13 thousand dollars a month with a year-to-year contract term.
14 This image was on their site on that Facebook page for over a
15 year, so they would have had to have paid about 24,000 if they
16 licensed it properly. We don't believe that somebody who
17 steals an image should pay the same as somebody who licenses it
18 properly, so...

11:45

19 Q. The -- the screenshot of the infringement had a November,
20 2021 date; correct?

11:45

21 A. Yes.

11:45

22 Q. Was the image still published on that Facebook page in
23 November of 2021?

11:45

24 A. Yes.

11:45

25 Q. And to your knowledge, when did the infringement begin?

11:45 1 A. The September date.

11:45 2 Q. In 2020?

11:46 3 A. '20, yes.

11:46 4 Q. Okay. So that's why you say more than a year --

11:46 5 A. Correct.

11:46 6 Q. -- at that point?

11:46 7 Now, if Food Town Mart or whoever's Facebook page it is had
8 properly subscribed to your library of photographs, how much
9 would they have paid, at least through November of 2021?

11:46 10 A. I'm sorry?

11:46 11 Q. If the -- if whoever's Facebook page it is --

11:46 12 A. Uh-huh.

11:46 13 Q. -- had been a true subscriber and paid you for access to
14 your photographs --

11:46 15 A. Yes.

11:46 16 Q. -- how much would they have had to pay from that September,
17 2020 through at least November, 2021 time period?

11:46 18 A. It would have been \$1,000 a month.

11:46 19 Q. But you said there was an annual commitment; correct?

11:46 20 A. Correct. So they can pay monthly, but it's still an annual
21 one-year term.

11:46 22 Q. Okay. So from September, 2020 through September, 2021 --

11:46 23 A. Would have been --

11:46 24 Q. -- would have been the --

11:46 25 A. 11,988 is what it comes out to.

11:47 1 Q. Let's call it 12, because I'm not great at math. So
2 roughly 12,000?

11:47 3 A. Yes.

11:47 4 Q. And then from the September, 2021 into November, 2021, are
5 they just paying for two months, or are they paying for another
6 whole year?

11:47 7 A. Another year.

11:47 8 Q. Okay. So the total -- if the infringement stopped in
9 November of 2021, the total that someone would have had to pay
10 is what?

11:47 11 A. About 24,000.

11:47 12 Q. Okay. Now, you asked for more than 24,000, though. You
13 asked for 30,000.

11:47 14 A. Uh-huh.

11:47 15 Q. Why are you asking for more than what they would have had
16 to pay legally?

11:47 17 A. Because it's the same as if you go into a grocery store and
18 you steal. You help yourself to some apples or bananas. If
19 you get caught, you don't just pay the price for those apples
20 and bananas. You're punished by having to pay more.

11:47 21 Q. This letter, I see it says via Federal Express; correct?

11:48 22 A. Yes.

11:48 23 Q. And there's one address that's identified here, the 3127
24 West Villard; correct?

11:48 25 A. Yes.

11:48 1 Q. Is there any other address that got sent to?

11:48 2 A. No.

11:48 3 Q. Was it sent by e-mail to anyone else?

11:48 4 A. No.

11:48 5 Q. Okay. So as far as you know, this is the only address that

6 it actually goes to; correct?

11:48 7 A. Absolutely.

11:48 8 Q. What happened in the weeks or months after this letter was

9 sent?

11:48 10 A. The September, 2021 -- Sept -- the --

11:48 11 Q. 2020.

11:48 12 A. Yes, the Sep -- the 2020 post was removed, was the only

13 thing that was removed from their Facebook page. And the name

14 was changed on the Facebook page.

11:48 15 Q. What do you mean the name was changed on the -- well, I

16 guess, let's start with the removal. You hired a law firm. A

17 law firm sent a letter to an address. After it got there, the

18 photograph came down?

11:48 19 A. Yes.

11:49 20 Q. Okay. Do you know if this was a week later, two weeks, six

21 months? Do you know when the photo came down?

11:49 22 A. I don't know exactly. I know it was shortly after the

23 letter was sent.

11:49 24 Q. Okay. And to your knowledge, were any other photographs

25 removed from this Facebook page?

11:49

1 A. No.

11:49

2 Q. Did you contact Facebook and say, "Facebook, you remove the
3 photo yourself"?

11:49

4 A. No.

11:49

5 Q. Okay. To your knowledge, anyone other than the owner of
6 this Facebook account could have removed this photograph -- to
7 your knowledge, could anyone have done it?

11:49

8 A. No.

11:49

9 MR. STEINLE: I object. Improper foundation. How
10 would she know?

11:49

11 THE COURT: She doesn't, so it's sheer speculation.

11:49

12 BY MR. DeSOUZA:

11:49

13 Q. Okay. But you did not reach out to any other party
14 demanding that it remove the photograph from the Facebook page
15 other than who was ever at the receiving end at this West
16 Villard Avenue address; correct?

11:50

17 A. Correct.

11:50

18 Q. Okay. Now, other than the photograph coming down somewhere
19 in the near time frame after having sent it, you said the name
20 of the Facebook account also changed?

11:50

21 A. Yes.

11:50

22 Q. Okay. So I'm going to go back to Plaintiff's Exhibit 10.
23 And this was the screenshot of the -- I guess the main account;
24 correct?

11:50

25 A. Yes.

11:50 1 Q. And tell me if I'm wrong, but the URL for this account is
2 still Villard Food Town; correct?
11:50 3 A. Correct.
11:50 4 Q. And the name, you're saying, changed after the letter was
5 sent?
11:50 6 A. Yes.
11:50 7 Q. What did -- what was the name changed to?
11:50 8 A. Food Town Mart.
11:50 9 Q. So now when I look at posts on this site, it shows as Food
10 Town Mart instead of Villard Food Town?
11:50 11 A. Yes.
11:51 12 Q. Okay. Do you, as you sit here, know how it is that the
13 name got changed from Villard Food Town to Food Town Mart?
11:51 14 A. No.
11:51 15 MR. STEINLE: I object, speculation. It's --
11:51 16 THE COURT: She said she doesn't know.
11:51 17 Ms. Jones, while we're on the subject of the letter, did
18 Mr. DeSouza's office ever provide you with a receipt for
19 delivery of that letter to anyone at that address on Villard
20 Avenue?
11:51 21 THE WITNESS: No.
11:51 22 THE COURT: Do you know that the letter was ever
23 delivered?
11:51 24 THE WITNESS: I have no proof that it was delivered,
25 other than the actions of the defendant after the letter was

1 sent.

11:51 2 THE COURT: But you don't know who removed it, you
3 don't know who got the letter, none of that; correct?

11:51 4 THE WITNESS: I don't know how I would know those
5 things.

11:51 6 THE COURT: And you don't know who, if anyone,
7 received that letter; correct?

11:52 8 THE WITNESS: I -- Facebook delivered it to that
9 address -- I mean, Fed Ex delivered it to --

11:52 10 THE COURT: How do you know Facebook delivered it?
11 There's no tracking number on the letter, there's nothing.

12 12 This is serious business. If you don't have proof, let's say
13 so.

11:52 14 THE WITNESS: I don't have proof that the letter was
15 delivered.

11:52 16 THE COURT: Thank you.

11:52 17 BY MR. DeSOUZA:

11:52 18 Q. Ms. Jones, eventually this lawsuit was filed; correct?

11:52 19 A. Yes.

11:52 20 Q. And we're -- I think this lawsuit was filed sometime in
21 '22, 2022, thereabouts; is that right?

11:52 22 A. Sounds right, yes.

11:52 23 Q. Okay. Since filing this lawsuit, have either of the
11:52 24 defendants admitted or acknowledged, yes, this is our Facebook
25 page?

11:52 1 A. No.
11:52 2 Q. Have they said anything different than that?

11:52 3 A. Yes.
11:53 4 Q. What -- to your knowledge, have the defendants denied that
5 this is their Facebook page?

11:53 6 MR. STEINLE: Well, I'm going to object to the form of
7 the -- improper foundation until he establishes that she talked
8 to someone personally.

11:53 9 THE COURT: Right. Let's get those preliminary
10 questions out, Mr. DeSouza.

11:53 11 BY MR. DeSOUZA:

11:53 12 Q. Ms. Jones, are you familiar with the pleadings and other
13 documents that have been filed in this lawsuit since the
14 beginning?

11:53 15 A. Yes.

11:53 16 Q. Okay. Am I correct that Prepared Food filed a complaint
17 where it made its allegations of copyright infringement?

11:53 18 A. Yes.

11:53 19 Q. Am I correct that defendants filed an answer to that
20 complaint?

11:53 21 A. Yes.

11:53 22 Q. Okay. In that answer, to your knowledge, did the
23 defendants admit or deny that this is their Facebook page?

11:53 24 A. They deny.

11:53 25 Q. Okay. Have there been other documents exchanged in this

1 case where the defendants, to your knowledge, have denied this
2 is their Facebook page?

11:53 3 MR. STEINLE: Well, I object, but which defendants is
4 he talking about?

11:54 5 THE COURT: Yeah.

11:54 6 BY MR. DeSOUZA:

11:54 7 Q. Ms. Jones, to your knowledge, have there been any other
8 documents where Nofal, LLC d/b/a Food Town denies that this is
9 its Facebook page?

11:54 10 A. Yes.

11:54 11 Q. Okay. To your knowledge, are there also documents filed in
12 this case where Mr. Jaber denies that this is Nofal, LLC's
13 Facebook page?

11:54 14 MR. STEINLE: I object --

11:54 15 A. Yes.

11:54 16 MR. STEINLE: -- improper foundation.

11:54 17 THE COURT: No, the answer will stand. The objection
18 is overruled.

11:54 19 BY MR. DeSOUZA:

11:54 20 Q. Okay. Are you familiar with what interrogatories are, Ms.
21 Jones?

11:54 22 A. I am.

11:54 23 Q. In general, what is your understanding of what
24 interrogatories are?

11:54 25 A. Interrogatories are written questions that are to be

1 answered truthfully.

11:54 2 Q. Okay. Did Prepared Foods serve interrogatories on either
3 of the defendants in this case?

11:54 4 A. Yes.

11:55 5 Q. Okay. Have you seen the defendants' responses to those
6 interrogatories?

11:55 7 A. I have.

11:55 8 Q. Okay. Ms. Jones, I'm going to put up on the screen what
9 we've marked as Plaintiff's Exhibit 8, which is identified as
10 Nofal, LLC d/b/a Food Town Mart's answers to interrogatories.
11 Do you see that?

11:55 12 A. I do.

11:55 13 Q. Have you ever seen this document prior to today?

11:55 14 A. Yes.

11:55 15 Q. Is this a document that was served on the plaintiff in this
16 lawsuit?

11:55 17 A. Yes.

11:55 18 Q. Okay. And if I scroll to the very bottom, Ms. Jones, it
19 appears to be dated; correct?

11:55 20 A. Yes.

11:55 21 Q. And what's the date?

11:55 22 A. 17th day of August, 2023.

11:55 23 Q. And it's signed; correct?

11:55 24 A. Yes.

11:55 25 Q. Who signed it?

11:55 1 A. Sharif Jaber.

11:55 2 Q. All right. And it looks like there's also a notary
3 signature, and I won't ask you to interpret whose signature
4 that is, okay.

11:55 5 A. Thank you.

11:56 6 MR. DeSOUZA: Okay. Your Honor, I would ask that
7 Plaintiff's Exhibit 8 be admitted into evidence.

11:56 8 MR. STEINLE: Well, I don't think that this is --
9 proper foundation's been laid for a document in discovery to be
10 admissible into evidence. I don't think -- I think that there
11 has to be a proper foundation, in other words, the individual
12 that signed the discovery. They're trying to get in this
13 discovery through a third party, Judge.

11:56 14 THE COURT: Understood. Mr. DeSouza, since the
15 individual who executed the affidavit will be a witness, you
16 can ask him about the response. But this is not a proper
17 witness to do so.

11:56 18 MR. DeSOUZA: All right. I'll take --

11:56 19 THE COURT: The objection is sustained.

11:56 20 MR. DeSOUZA: I'll take that down, your Honor.

11:56 21 BY MR. DeSOUZA:

11:57 22 Q. Ms. Jones, you said your understanding is the defendants
23 have denied this being Nofal, LLC's Facebook page; correct?

11:57 24 A. Correct.

11:57 25 Q. Do you believe that to be a true statement?

11:57 1 MR. STEINLE: Well, I object, Judge. Again, he's
2 asking this opinion to render an opinion about the
3 truthfulness.

11:57 4 THE COURT: The objection is sustained. The jury is
5 instructed to ignore the question.

11:57 6 BY MR. DeSOUZA:

11:57 7 Q. Ms. Jones, other than the Facebook page -- other than the
8 Facebook post with the alleged infringement, did you take
9 photographs or screenshots of any other photographs on that
10 Facebook page?

11:57 11 A. I did.

11:57 12 Q. How many are we talking about?

11:57 13 A. I would have to say maybe hundreds.

11:57 14 Q. Okay. Ms. Jones, I would like to show you what we've
15 identified as Plaintiff's Exhibit 19, okay? Is this another
16 screenshot of the same Villard Food Town account?

11:58 17 A. Yes.

11:58 18 Q. Okay. And I guess this is at a time when the name was Food
19 Town Mart; is that right?

11:58 20 A. Yes.

11:58 21 Q. And the date of this screenshot, Ms. Jones, is what?

11:58 22 A. 26 September, 2023.

11:58 23 Q. Okay. So the lawsuit was already going at that time;
24 correct?

11:58 25 A. Yes.

11:58 1 Q. All right. So what is this a screenshot of?

11:58 2 A. All of the photos that appear on this business' Facebook

11:58 3 page.

11:58 4 Q. So you took a screenshot -- it looks like there's a photo

11:58 5 tab, if you will, on this Facebook page?

11:58 6 A. Yes.

11:58 7 Q. And you took a screenshot of all of the photographs that

11:58 8 appeared on the Facebook page as of that date?

11:58 9 A. Correct.

11:58 10 MR. DeSOUZA: Okay. Your Honor, I would ask that

11:58 11 Plaintiff's Exhibit 19 be moved into evidence.

11:58 12 MR. STEINLE: I would object on relevancy grounds.

11:58 13 We're talking about one photograph. I don't know what

11:58 14 relevance this has to the proceedings before the Court.

11:59 15 THE COURT: The objection is sustained.

11:59 16 BY MR. DeSOUZA:

11:59 17 Q. Ms. Jones, why did you take photographs -- why did you take

11:59 18 screenshots of other photographs on the page?

11:59 19 A. To show --

11:59 20 THE COURT: Mr. DeSouza, that's irrelevant to the

11:59 21 case, unless you're prepared to demonstrate to this jury that

11:59 22 the named defendants posted other of your client's photos on

11:59 23 their web page or Facebook page, it's totally irrelevant to

11:59 24 your client's case.

11:59 25 MR. DeSOUZA: Your Honor, the relevance, if you will,

1 is that Mr. Jaber in his deposition looked at these same
2 photographs, photographs that depict the store itself, the
3 shelving on the store, the products being sold, and testified
4 under oath, "I don't sell those products. That's not my store.
5 Those are not signs from my store." And so the relevance is at
6 least with respect to products being sold and flyers showing
7 that this is, indeed, the store at issue, your Honor, the same
8 signs, the same speakers, the same --

12:00 9 THE COURT: With all due respect, Mr. DeSouza, your
10 explanation just given totally underscores Mr. Steinle's
11 objection. Not relevant.

12:00 12 BY MR. DeSOUZA:

12:00 13 Q. Ms. Jones, was Food Town Mart authorized at any point in
14 time to use PFP's photograph?

12:00 15 A. No.

12:00 16 Q. The --

12:00 17 THE COURT: Ms. Jones, you don't even have evidence
18 that this photograph actually came from your website; correct?

12:00 19 THE WITNESS: Correct.

12:01 20 THE COURT: And looking at the photograph as a
21 layperson, how would he or she even know that it was
22 copyrighted without the copyright symbol appearing in the
23 graphic?

12:01 24 THE WITNESS: There was no requirement for
25 a photograph --

12:01 1 THE COURT: I'm not saying about a requirement. I'm
2 talking about if I were to see a photograph on the internet, it
3 didn't have the copyright signal -- symbol, it didn't come from
4 Getty Images where most of these photos have a disclaimer at
5 the foot saying where it was produced, so how would a layperson
6 know that an item is copyrighted in the absence of the
7 copyright symbol?

12:02 8 I appreciate the law says there's no requirement. But my
9 question is: How does a layperson acquire an understanding
10 that something is or may be copyrighted?

12:02 11 THE WITNESS: When you perform a Google search for an
12 image, it says under the results, "This image may be subject to
13 copyright." You have the option to view the image source and
14 follow that trail.

12:02 15 THE COURT: Thank you.

12:02 16 THE WITNESS: You're welcome.

12:02 17 BY MR. DeSOUZA:

12:02 18 Q. Ms. Jones, whether -- whether it was named Villard Food
19 Town or Food Town Mart, at least the display name of the
20 Facebook account, did that account use the photo that's at
21 issue in this case?

12:02 22 A. Yes.

12:03 23 Q. Okay. And you don't know whether whoever put the photo up
24 got it specifically from your website or from some other
25 website that may have been authorized to use the photograph;

1 correct?

12:03 2 A. Correct.

12:03 3 MR. STEINLE: Well, I object. That's asked and
4 answered. She already answered the question. She said she
5 doesn't know where it -- that it came from her website. It's
6 asked and answered.

12:03 7 THE COURT: Yes. That's correct, Mr. Steinle.

12:03 8 Do you have any other questions, Mr. DeSouza?

12:03 9 MR. DESOUZA: No, your Honor, not at this time.

12:03 10 THE COURT: Mr. Steinle, any cross of this witness?

12:03 11 MR. STEINLE: I do, your Honor.

12:03 12 THE COURT: You may proceed.

12:03 13 THE WITNESS: May I just -- may I get a drink of
14 water?

12:03 15 THE COURT: Certainly.

12:03 16 THE WITNESS: Thank you.

12:03 17 THE COURT: Ms. Vraa, could get the witness a cup of
18 water.

12:04 19 THE WITNESS: I have my bottle. Thank you. Thank you
20 very much.

12:04 21 CROSS-EXAMINATION

12:04 22 BY MR. STEINLE:

12:04 23 Q. Good afternoon, Ms. Jones. I think it's early afternoon.

12:04 24 A. Good afternoon.

12:04 25 Q. In this particular case, ma'am, you completed or prepared

1 and finished a document which was entitled The Declaration of
2 Rebecca Jones. Do you remember doing that, ma'am?

12:04 3 A. I do.

12:04 4 Q. And, in fact, that was filed with this Court under Document
5 No. 36, and it was -- this document, the declaration, is
6 entitled 36-1. Do you remember doing that document, ma'am?

12:04 7 A. I do.

12:04 8 Q. In that document -- and by the way, you signed that
9 document under oath, did you not?

12:04 10 A. Yes.

12:05 11 Q. Now, in that document, ma'am, you indicated some things.
12 You indicated that --

12:05 13 MR. DeSOUZA: I'm going to object, your Honor.
14 Whatever document Mr. Steinle is referring to is not on any
15 exhibit list. He's not using it to refresh a witness'
16 recollection. He's not impeaching her, as far as I can tell
17 with it, it's -- I think it's an improper exhibit at this
18 point.

12:05 19 MR. STEINLE: Oh, no, Judge. This is a document
20 that's filed with the Court. This is a document in the record
21 already. It is not an exhibit. I'm not going to use it as an
22 exhibit. I'm -- this is a document that she -- this is a prior
23 executed affidavit that she prepared.

12:05 24 THE COURT: Sure. No, the objection is overruled.
25 You may question the witness.

12:05

1 BY MR. STEINLE:

12:05

2 Q. Now, ma'am, in that document, you indicated that there were
3 -- and I'm going to read it -- "For any image," and then you
4 put in parentheses, "(including the 16 at issue in this
5 lawsuit)," comma, "the plaintiff photographer spent hours
6 specializing lighting, equipment and take dozens if not
7 hundreds of images." We're not talking about 16 images. We're
8 talking about one photograph of a pork chop; right?

12:06

9 A. Correct.

12:06

10 Q. But you indicated in this affidavit that there were 16
11 different images that are at issue in this lawsuit, did you
12 not?

12:06

13 A. There was an inadvertent six.

12:06

14 Q. Pardon?

12:06

15 A. There was an inadvertent six that was included.

12:06

16 Q. But -- but it's written S-I-X-T-E-E-N. It's not
17 inadvertent to write S-E-X -- S-I-X-T-E-E-N, is it?

12:06

18 A. No. It was an error. It's never been disputed that
19 there's only one image involved.

12:06

20 Q. And then -- and then in this affidavit, what you indicate,
21 ma'am, is you said when the plaintiff staff discovers an
22 existing photograph, it says the plaintiff, meaning PFP,
23 creates an infringement notice and that the date of -- and the
24 date of the delivery is within one or two days thereafter.
25 That's what it indicates, the plaintiff.

12:07 1 Did you, ma'am, or did PFP create an infringement notice?

12:07 2 A. We did.

12:07 3 Q. And do you have a -- did you prepare that infringement

12:07 4 notice? Did PFP prepare that infringement notice?

12:07 5 A. We did.

12:07 6 Q. And do you have a copy of that infringement notice?

12:07 7 A. I -- I do.

12:07 8 Q. And when was -- when was the date of the infringement

12:07 9 notice sent by PFP?

12:07 10 A. The infringement notice was sent to our attorney.

12:07 11 Q. No, but that's not what it says. It says the infringement

12:07 12 notice indicates it's sent to the violator. Did PFP send an

12:07 13 infringement notice to the violator?

12:07 14 A. Is that -- is that what -- does it say an infringement

12:07 15 notice was sent to the violator?

12:07 16 Q. I will read this to you. When the plaintiff's --

12:07 17 plaintiff's staff discovers an existing, and then there's a

12:07 18 parentheses, infringement of one of the photographs, the

12:07 19 plaintiff creates an infringement notice on the date of

12:07 20 discovery within one or two days thereafter. The infringement

12:07 21 notice identifies the date, displays the subject, and displays

12:07 22 a screenshot of the infringer's alleged use together with the

12:07 23 URL where the infringement is located. And then you say a true

12:07 24 and correct copy of the infringement notice with respect to the

12:07 25 work at issue in this lawsuit is attached hereto and labeled as

1 Exhibit No. 1, but that wasn't attached, was it?
12:08 2 A. The screenshot from the infringement notice was.
12:08 3 Q. But not the notice.
12:08 4 A. If I can explain the process a little bit?
12:08 5 Q. No. I'm just asking whether PFP, your company --
12:08 6 A. Uh-huh.
12:08 7 Q. -- sent an infringement notice within one or two days after
 8 discovery.
12:08 9 A. We did.
12:09 10 Q. And who did you send it to?
12:09 11 A. Our attorney.
12:09 12 Q. You never sent it to the violator.
12:09 13 A. No.
12:09 14 Q. And the -- as we sit here today, the only notice that you
 15 know of is the letter from Mr. DeSouza in November of 2021?
12:09 16 A. Along with the complaints.
12:09 17 Q. The only infringement notice.
12:09 18 A. Correct.
12:09 19 Q. And you have testified on direct examination what we're
 20 talking about today is a photograph that was taken in 1997;
 21 correct?
12:09 22 A. Yes.
12:09 23 Q. It wasn't copyrighted for 20 years until 2017; right?
12:09 24 A. Correct.
12:09 25 Q. And it wasn't used until 2023; right?

12:09 1 A. Incorrect.

12:09 2 Q. Excuse me. It is incorrect. 2020 it was used; right?

12:09 3 A. Correct.

12:10 4 Q. So from the date of creation until the date of use, that

12:10 5 photograph's 23 years old?

12:10 6 A. Yes.

12:10 7 Q. Is that photograph on the internet before it's copyrighted?

12:10 8 A. I don't know.

12:10 9 Q. In any event, you continue on with your declaration and you

12:10 10 indicate this: That the defendant's have -- are not and have

12:10 11 never been licensed to display the work. And this is your

12:10 12 affidavit under oath: Through its ongoing diligent efforts to

12:10 13 identify unauthorized use of the photographs, the plaintiff's

12:10 14 first discovery of the defendant's unauthorized use display of

12:10 15 the photograph at issue is in approximately April of 2022.

12:10 16 That's what you have in your declaration, ma'am. That it

12:10 17 wasn't even discovered until six months after the notice goes

12:10 18 out.

12:11 19 A. No. I'm sorry. That must have been an error on my

12:11 20 declaration. Because the day that we take the screenshot is

12:11 21 the first day we find the use, which is before that date.

12:11 22 Q. But you continue on in your declaration, and you state in

12:11 23 the following paragraph that: Given the volume of the

12:11 24 plaintiff's library, the plaintiff was reasonably unable to

12:11 25 discover the defendant's improper use of the work prior to

1 April of 2022.

12:11 2 So, again, in another paragraph, you're referencing
3 discovery in April of 2022. Was the work discovered prior to
4 April of 2022?

12:11 5 A. It was discovered at the date of the screenshot.

12:11 6 Q. Then why in your declaration are you commenting or
7 mentioning under oath that the discovery is in April of 2022?

12:12 8 A. It was an error.

12:12 9 Q. Now, you also indicate in your declaration that: Following
10 plaintiff's discovery of the infringement, the plaintiff sent
11 at least one infringement notice to the defendant to notify it
12 of the impermissible use. And then you continue in your
13 declaration under oath by stating: The defendant's president
14 and founder -- the defendant's president and founder --
15 responded to the plaintiff's infringement notice by seemingly
16 wanting to resolve the matter. Multiple subsequent e-mails to
17 the defendant to resolve this matter were largely ignored.

12:12 18 Did the plaintiff, you, did you send an infringement notice
19 to Sharif Jaber or Nofal, LLC?

12:13 20 A. My attorney's office, as our representative, sent an
21 infringement notice.

12:13 22 Q. But that doesn't -- it says the plaintiff sent it. But
23 we've already established the letter to Faraj Jaber is the only
24 notice that's been sent in this case; right?

12:13 25 A. Yes.

12:13 1 Q. Do you have any notice that was sent to Sharif Jaber
2 personally or as the member president of Nofal, LLC? Do you
3 have any notice?

12:13 4 A. No.

12:13 5 Q. So who did -- who did the PFP talk to who was the president
6 and founder of the defendant that talked about resolution? Who
7 talked to them?

12:13 8 A. I know that there was -- there was a discussion and -- with
9 the landlord, who let us know who owned the grocery store.

12:14 10 Q. But that's not the owner of the business, ma'am. That's
11 not the infringer. The landlord's not the infringer, is the
12 landlord?

12:14 13 A. No.

12:14 14 Q. Is the landlord authorized, if you know, to enter into
15 settlement discussions about a violation of a copyright?

12:14 16 A. No.

12:14 17 Q. You indicate in your -- in your affidavit: Multiple
18 subsequent e-mails were sent to the defendant. How many
19 e-mails were sent to the defendant Mr. Sharif Jaber?

12:14 20 A. I don't know.

12:14 21 Q. How many e-mails were sent to Nofal, LLC?

12:14 22 A. I don't know.

12:14 23 Q. But you indicate that in your declaration that multiple
24 e-mails were sent; correct?

12:14 25 A. Yes.

12:15 1 Q. Now...

12:15 2 MR. STEINLE: I am not very talented.

12:15 3 Can you get that there, Sharif, while I get the document
12:15 4 up?

12:15 5 MR. JABER: No.

12:15 6 MR. STEINLE: Huh?

12:15 7 MR. JABER: No.

12:15 8 MR. STEINLE: I was here before. It worked.

12:16 9 BY MR. STEINLE:

12:16 10 Q. Well, let me -- let me ask the question so as to not delay
12:16 11 these proceedings.

12:16 12 The only notice which we've established is sent to Faraj
12:16 13 Jaber; correct?

12:16 14 A. Yes.

12:16 15 Q. And did you see the address on that notice?

12:16 16 A. Yes.

12:16 17 Q. The address is 3127. That's not the address of the store,
12:16 18 is it, ma'am?

12:16 19 A. Correct.

12:16 20 Q. The address is 3217 Villard. So the notice even has the
12:16 21 wrong address on it; correct?

12:16 22 A. I noticed that today, yes.

12:16 23 Q. You don't know whether anybody ever received that November,
12:16 24 2021 notice, do you -- that anybody ever received it, do you?

12:17 25 A. I do.

12:17 1 Q. You do know that they received it?

12:17 2 A. Yes. I know that someone received it, yes.

12:17 3 Q. How do you know that, ma'am?

12:17 4 A. Because the person who received it indicated that they were
5 the landlord, and it was not --

12:17 6 Q. They didn't indicate that to you, ma'am, did they?

12:17 7 A. They indicated it to my attorney, who represents --

12:17 8 Q. That -- that's -- they didn't indicate that to PFP, did
9 they?

12:17 10 A. Mr. DeSouza's law firm acts as our representative for us.

12:17 11 Q. If -- if, indeed, what you just testified to, then my
12 question to you is: This is now May 31st of 2022. You
13 authorized that law firm, the Copycat law firm, to file an
14 original summons and complaint naming Faraj Jaber; correct?

12:18 15 A. I don't know that Faraj Jaber was named individually.

12:18 16 Q. You filed the original complaint against Mr. Jaber doing
17 business as Villard Food Town; right?

12:18 18 MR. DESOUZA: Objection, your Honor. This is
19 misrepresenting the record. The defendant in this case
20 originally was Villard Food Town, LLC. Mr. Steinle is just --

12:18 21 MR. STEINLE: I will withdraw the question and reask
22 it.

12:18 23 THE COURT: All right.

12:18 24 BY MR. STEINLE:

12:18 25 Q. The original lawsuit, we're talking about the notice going

1 in November, and you're telling me there's some conversations
2 about they've got the wrong person. But even though they've
3 got the wrong person, you sue Villard Food Town, LLC in May of
4 2022; right?

12:19 5 A. I don't -- I'm not a hundred percent positive on when the
6 conversations were as to the wrong party, whether it was -- I
7 think it might have been after the complaint was filed, the
8 original complaint.

12:19 9 Q. And it wasn't until February 6th of 2023 that Nofal, LLC
10 and Sharif Jaber are sued. It isn't until February 6th of 2023
11 that they're -- that my clients are sued; right?

12:19 12 A. Correct.

12:19 13 Q. So between May 31st of 2022 and February 6th of 2023, are
14 you aware of any other notice that my client had of this
15 pending copyright lawsuit? Are you aware of any?

12:19 16 A. No.

12:20 17 Q. Other than this one photograph that was incorporated into a
18 group of three photographs listing a sale, are you aware of any
19 other use of any photograph of PFP other than this one?

12:20 20 A. No.

12:20 21 Q. And this is one of approximately 20,000; correct?

12:20 22 A. 18,000.

12:20 23 Q. Okay. And whether it's one of 18 or 20, that -- we're only
24 talking about one photograph; right?

12:20 25 A. Correct.

12:20 1 Q. So is -- is the 18,000 the entire library that you sell for
2 \$999 a month?

12:20 3 A. We don't sell the library. You're subscribed to the
4 library.

12:21 5 Q. I apologize for my misspeaking. The subscription.

12:21 6 A. Correct.

12:21 7 Q. So I'm not a math major, but one out of approximately
8 20,000 is .0005 percent; correct?

12:21 9 A. That's correct, but it doesn't matter.

12:21 10 Q. I didn't ask that, ma'am. I asked if that was the correct
11 percentage.

12:21 12 A. For the math calculation, yes.

12:22 13 Q. Have you calculated what you have declared to be that the
14 use of the photograph greatly reduced the value of the
15 plaintiff's library, have you calculated that loss, ma'am?

12:22 16 A. Yes.

12:22 17 Q. And what is your calculation, what you talked about, the
18 failure to pay the subscription fee?

12:22 19 A. Yes.

12:22 20 Q. But that's not the comment. The -- or not the question.
21 The question is: How does this photograph greatly reduce the
22 value of the library?

12:22 23 A. As I spoke about earlier, an unauthorized use goes against
24 what we are telling our licensed paying subscribers they are
25 receiving, which is the enforcement of ensuring that only our

1 subscribers are using our photos, we have control over who and
2 where those photos are being used.

12:22 3 Q. But it only reduces the value of the library if somebody
4 knows that this is a copyrighted photograph; right?

12:23 5 MR. DeSOUZA: Objection. How can she know that? Lack
6 of foundation.

12:23 7 THE COURT: No, that objection is overruled.

12:23 8 A. I'm sorry. Could you repeat the question?

12:23 9 BY MR. STEINLE:

12:23 10 Q. Yes, I may -- yes, I could. The value of the library is
11 only reduced if someone is aware that the use of that
12 photograph is a copyrighted photo; right?

12:23 13 A. I disagree with that statement.

12:23 14 Q. And coupled with these -- this one photograph were two
15 other photographs that you didn't own those photographs, did
16 you?

12:23 17 A. We did not.

12:23 18 Q. And you don't know whether they're copyrighted, did you?

12:24 19 A. I have no idea.

12:24 20 Q. You also indicate along the same lines that -- in this
21 declaration that the use of the photograph, quote, "greatly
22 impairs the market value of the photographs since others
23 competing with that business or in a related business will not
24 want to obtain a license from the plaintiff's work." How does
25 anybody know by looking at the screenshot of the violation that

1 that's a copyrighted photo?

12:24 2 A. They may not know that it's a copyrighted photo, but that
3 doesn't mean that it doesn't damage our company.

12:25 4 MR. STEINLE: Thank you, Ms. Jones. I don't have any
5 further questions.

12:25 6 THE COURT: Thank you.

12:25 7 Mr. DeSouza, anything further?

12:25 8 MR. DESOUZA: Yes, your Honor.

12:25 9 REDIRECT EXAMINATION

12:25 10 BY MR. DESOUZA:

12:25 11 Q. Ms. Jones, you testified -- well, let's start with this
12 idea of copyrighted photograph, Ms. Jones. Who owned the
13 photograph at issue in this case from the date of its creation
14 through today, so interest from 1997 through today, who's the
15 owner of that photograph?

12:25 16 A. Our company.

12:25 17 Q. And in terms of owning the copyright in the photograph, do
18 you understand whether there's any difference in owning the
19 copyright versus registering the photograph with the copyright
20 office?

12:25 21 A. Registering the photograph with the copyright office just
22 affords you some further protection. But as soon as a
23 photographer clicks the shutter, they have the copyright to
24 that photo.

12:26 25 Q. So who owned the copyright in this photograph from 1997

1 through September 28th, 2020, when the alleged infringement
2 occurred?

12:26 3 A. Our company.

12:26 4 Q. Ms. Jones, you testified that you went to the store
5 yesterday, I believe; correct?

12:26 6 A. Yes.

12:26 7 Q. What time of day did you go to -- and it's the store on
8 3217 West Villard?

12:26 9 A. Yes.

12:26 10 Q. What time of day did you go to the store?

12:26 11 A. It was in the afternoon, early afternoon.

12:26 12 Q. Okay. Did you go into the store?

12:26 13 A. I did.

12:26 14 Q. Did you shop?

12:26 15 A. I did.

12:26 16 Q. Did you walk around?

12:26 17 A. I walked, yes, around the entire store.

12:26 18 Q. Okay. Ms. Jones, I want to show you another one of these
19 screenshots, which we've identified as Plaintiff's Exhibit 18.
20 There it is on the screen. Do you see that on the screen, Ms.
21 Jones?

12:26 22 A. I do.

12:27 23 Q. Okay. Is this another one of these Facebook posts from the
24 same Food Town Mart or Villard Food Town account?

12:27 25 A. Yes.

12:27 1 Q. Okay. And the date on this screenshot was when?

12:27 2 A. September 28th, 2023.

12:27 3 Q. And it appears to be a Facebook post; correct? Do you see

12:27 4 the date of the post?

12:27 5 A. I do.

12:27 6 Q. What's the date?

12:27 7 A. September 6, 2022.

12:27 8 Q. Okay. And I think we -- does this appear to be the same

12:27 9 like main photograph associated with this account which is the

12:27 10 outside of the store?

12:27 11 A. Yes.

12:27 12 Q. Okay. And is this the same store that you went and visited

12:27 13 yesterday?

12:27 14 A. It is.

12:27 15 Q. Okay. Ms. Jones, when you walked around the store, did you

12:27 16 see anything at the store from any of the Facebook postings

12:27 17 that you had looked at previously?

12:27 18 MR. STEINLE: I object, relevancy.

12:28 19 THE COURT: Yeah. This is in 2024, not 2021, '22, or

12:28 20 '23. This is not relevant to the case before the jury.

12:28 21 MR. DeSOUZA: Your Honor --

12:28 22 THE COURT: Let's move on.

12:28 23 MR. DeSOUZA: -- I'd like to make a record briefly,

12:28 24 your Honor. The only reason I asked her is that Mr. Jaber has

12:28 25 denied that this is his store in his testimony. He has said,

1 "Those are not my signs, those are not my store." And to the
2 extent that Ms. Jones can say, "Yes, those are the same signs
3 and the same things that I saw," that would be the purpose of
4 the testimony, your Honor.

12:28 5 THE COURT: That's fine. You've made your record.

6 The Court and Mr. Steinle have made theirs. Let's move on.

12:28 7 BY MR. DeSOUZA:

12:28 8 Q. Okay. Ms. Jones, the original defendant in this case, as
9 Mr. Steinle pointed out, was a company named Villard Food Town,
10 LLC; correct?

12:28 11 A. Yes.

12:28 12 Q. Okay. But that is no longer the defendant in this case;
13 right?

12:28 14 A. Correct.

12:29 15 Q. And why is it that PFP changed the defendant in this
16 lawsuit from Villard Food Town to both Mr. Jaber and Nofal,
17 LLC? What reason?

12:29 18 MR. STEINLE: Object, improper foundation.

12:29 19 THE COURT: Yes. The objection is sustained.

12:29 20 BY MR. DeSOUZA:

12:29 21 Q. Ms. Jones, why do you believe that Nofal, LLC and Mr. Jaber
22 are the proper defendants who owned this Facebook page, rather
23 than some other company?

12:29 24 MR. STEINLE: I object, relevance.

12:29 25 THE COURT: Sustained.

12:29 1 MR. DeSOUZA: Okay. Ms. Jones, I have no further
2 questions for you at this time.

12:29 3 THE WITNESS: Okay.

12:29 4 THE COURT: Mr. Steinle, anything further?

12:29 5 MR. STEINLE: Nothing in response to his redirect,
6 sir.

12:29 7 THE COURT: Thank you.

12:29 8 Members of the jury, we're going to recess for lunch. As I
9 explained, we're going to take 45 minutes. Again, I remind you
10 as I did earlier: Please do not discuss the case among
11 yourselves during the recess. You can talk about the Packer
12 win or anything else that may be on your mind, but please do
13 not discuss this case. Please leave your notebooks on your
14 chair. They will be there when you return. I would ask that
15 you be back in the jury room at 1:15. We'll see you then. The
16 Court stands in recess.

12:30 17 COURT SECURITY OFFICER: All rise.

12:30 18 (The jury left the courtroom.)

12:30 19 (The proceedings recessed for lunch.)

13:16 20 COURT SECURITY OFFICER: All rise.

13:16 21 (The jury entered the courtroom.)

13:16 22 (The court is called to order.)

13:17 23 THE COURT: Good afternoon, members of the jury. Good
24 afternoon, counsel and your clients.

13:17 25 Mr. DeSouza, you may call your next witness.

13:17 1 MR. DeSOUZA: Your Honor, plaintiff calls Amjad Hamed.
13:17 2 MR. STEINLE: May I have permission to go get him?
13:18 3 THE COURT: Sure.
13:18 4 THE CLERK: Please raise your right hand.
13:18 5 (The witness is sworn.)
13:18 6 THE WITNESS: Yes.
13:18 7 THE CLERK: Thank you. Please be seated. Please
8 state your full name and spell it for the court reporter.
13:18 9 THE WITNESS: Amjad Sharif Hamed, first name
10 A-M-J-A-D, middle name S-H-A-R-I-F, last name H-A-M-E-D.
13:18 11 AMJAD SHARIF HAMED,
12 called by the Plaintiff as a witness herein, having been first
13 duly sworn, was examined and testified as follows:
13:18 14 DIRECT EXAMINATION
13:18 15 BY MR. DeSOUZA:
13:18 16 Q. Good afternoon, Mr. Hamed.
13:18 17 A. Good afternoon.
13:18 18 Q. Mr. Hamed, this is not the first time that you and I are
19 talking to each other; right?
13:18 20 A. No, sir.
13:18 21 Q. I think you had your deposition taken in this case, it was
22 a little less than a year ago in December of last year; is that
23 right?
13:19 24 A. Yes, sir.
13:19 25 Q. At the time of your deposition, you were living with your

1 parents, which I believe are -- Sharif Jaber is your father;
2 correct?

13:19 3 A. Yes.

13:19 4 Q. And Sharif Jaber is the gentleman that's in the courtroom
5 over here; correct?

13:19 6 A. Yes, sir.

13:19 7 Q. Okay. Are you still living at that same address?

13:19 8 A. No, sir.

13:19 9 Q. Okay. You've moved since then; correct?

13:19 10 A. Yes, sir.

13:19 11 Q. At the time of your deposition, you had not discussed this
12 lawsuit substantively with your father; correct?

13:19 13 A. No, sir.

13:19 14 Q. Have you had a chance to discuss it with him since then?

13:19 15 A. No, sir.

13:19 16 Q. Okay. Now, the other defendant in this case besides Mr.
17 Jaber is an entity named Nofal, LLC. The name Nofal, that has
18 a meaning to you; correct?

13:19 19 A. Yes, sir.

13:19 20 Q. It's your brother's name; correct?

13:19 21 A. Yes, sir.

13:19 22 Q. I believe it's an older brother; correct?

13:19 23 A. Yes, sir.

13:19 24 Q. How much older is Nofal than you?

13:19 25 A. About five years.

13:19 1 Q. About five years?

13:19 2 A. Yes, sir.

13:20 3 Q. Okay. Do you still work at the Food Town Mart on 3217 West

 4 Villard?

13:20 5 A. Yes, sir.

13:20 6 Q. Okay. And you worked there about a year ago when we took

 7 your deposition; correct?

13:20 8 A. Yes, sir.

13:20 9 Q. True that you've worked there since it was either late 2019

 10 or early 2020; correct?

13:20 11 A. Yes, sir.

13:20 12 Q. Food Town Mart at 3217 West Villard, that is a supermarket/

 13 grocery store; correct?

13:20 14 A. Yes, sir.

13:20 15 Q. And if I -- my math is right, you've worked there for about

 16 four years at this point, maybe a little bit more; is that

 17 right?

13:20 18 A. Just about, yes, sir.

13:20 19 Q. And when you first started, you were a stocking clerk and

 20 you became a floor manager by the time that I talked to you

 21 last year; correct?

13:20 22 A. Yes, sir.

13:20 23 Q. About how long were you a clerk versus the floor manager

 24 for?

13:21 25 A. I don't remember off the top of my head.

13:21 1 Q. Okay. Was it pretty quick that you graduated to floor
2 manager?
13:21 3 A. Maybe about year and a half, two years.
13:21 4 Q. Okay. And for the entire time that you've worked at the
5 store, it's been known as the Food Town Mart; correct?
13:21 6 A. Yes, sir.
13:21 7 Q. Is there still a sign today at the store that says Villard
8 Food Town?
13:21 9 A. Yes, sir.
13:21 10 Q. Okay. So when I -- when I drive in to the shopping center
11 to the grocery store, there's a sign outside that says Villard
12 Food Town?
13:21 13 A. Yes, sir.
13:21 14 Q. There also a sign that says Food Town Mart on the outside?
13:21 15 A. Yes, sir.
13:21 16 Q. Okay. But to your knowledge, at least internally, you
17 believe the store is called Food Town Mart, notwithstanding the
18 sign that says Villard Food Town; correct?
13:21 19 A. Yes, sir.
13:22 20 Q. Okay. The name Villard Food Town, that to your knowledge
21 was the name prior to it being Food Town Mart; correct?
13:22 22 A. As far as I know, yes, sir.
13:22 23 Q. But regardless of the name, whether it's Villard Food Town
24 or Food Town Mart, the store has always operated at that same
25 address on Villard Avenue; correct?

13:22 1 A. 3217 West, yes, sir.

13:22 2 Q. I keep saying "Villard." Is it "Villard"?

13:22 3 A. It's "Villard," yes, sir.

13:22 4 Q. Okay. Well, I'll do my best.

13:22 5 A. No problem.

13:22 6 Q. As the floor manager -- and are you still the floor manager
7 of the store?

13:22 8 A. Yes, sir.

13:22 9 Q. Okay. Has your position changed at all in the year since I
10 last talked to you?

13:22 11 A. No, sir.

13:22 12 Q. Okay. So then as floor manager, I'm correct, then, that
13 you're generally in charge of things like ordering products,
14 opening the store when you're there, closing the store when
15 you're there; is that right?

13:22 16 A. Somewhat, yes, sir.

13:22 17 Q. And generally making sure that things are in order at the
18 store?

13:22 19 A. Uh-huh.

13:22 20 Q. Yes?

13:22 21 A. Yes, sir.

13:23 22 Q. Okay. And you -- you have a boss at the store; correct?

13:23 23 A. Yes, sir.

13:23 24 Q. Sharif Jaber, the defendant in this case, is your boss;
25 correct?

13:23 1 A. Yes, sir.

13:23 2 Q. He's the boss of everyone at the store; correct?

13:23 3 A. Yes, sir.

13:23 4 Q. And Mr. Jaber does come to the store; correct?

13:23 5 A. Yes, sir.

13:23 6 Q. At least five times a week?

13:23 7 A. Yes, sir.

13:23 8 Q. And when he's there, he's there for seven, eight hours a day?

13:23 9 A. Yes, sir.

13:23 10 Q. Generally a full-time employee, essentially he's there at the store; correct?

13:23 11 A. I mean, it all really depends on the day and what progresses through; but, yeah, roughly about.

13:23 12 Q. And some -- and some weeks it's seven days a week; correct?

13:23 13 A. Yeah.

13:23 14 Q. Okay. And when your father is -- I'm sorry, your father is generally familiar with the layout of the store; correct?

13:23 15 A. Yes, sir.

13:23 16 Q. Okay. I mean, you've seen him walking around the store before; correct?

13:24 17 A. Yes.

13:24 18 Q. And to your knowledge, your father has owned this store since 2017; is that right?

13:24 19 A. As far as I know, yes, sir.

13:24 1 Q. And to your knowledge, your father was working at this
2 store prior to 2017?

13:24 3 A. Yes, sir.

13:24 4 Q. Food Town Mart, the store, it sells the types of things you
5 would find in a normal grocery store; correct?

13:24 6 A. Yes, sir.

13:24 7 Q. So things like food, meat, toiletries, things like that;
8 correct?

13:24 9 A. Yes, sir.

13:24 10 Q. And that has stayed consistent since the time that you
11 started working there, whether it was late 2019 or early 2020;
12 right?

13:24 13 A. Yes, sir.

13:24 14 Q. Sir, Food Town Mart has a Facebook page; correct?

13:24 15 A. Yes, sir.

13:24 16 Q. And the Facebook page that it has is called Food Town Mart;
17 correct?

13:24 18 A. Yes, sir.

13:24 19 Q. Are you aware of that same Facebook page being called
20 anything else during the times you worked there?

13:24 21 A. During the time I worked there, no.

13:24 22 Q. Okay. Now, when you started working there, the Facebook
23 page was already existing; correct?

13:24 24 A. Yes, sir.

13:25 25 Q. Okay. And your older brother Nofal, who you said is about

1 five years older than you, he was one that was in charge of the
2 Facebook page before you started working there; correct?

13:25 3 A. Yes, sir.

13:25 4 Q. Is that yes, sir?

13:25 5 A. Yes, sir.

13:25 6 Q. Okay. When your older brother stopped working at the
7 store, you took over control of the Facebook page; correct?

13:25 8 A. Well, yeah, he showed me how to post on the Facebook page,
9 and there is a Facebook page for Food Town.

13:25 10 Q. Well, when he stopped working at the store, other than
11 transitioning it over to you, he generally stopped being in
12 control of the Facebook page; correct?

13:25 13 A. Not completely.

13:25 14 Q. He still did a couple of posts here and there?

13:25 15 A. Here and there. I mean, I would talk to him for advice on
16 how to post and go about things. Sometimes I didn't think I
17 needed advice, and I would post myself.

13:26 18 Q. And prior to your brother leaving the employment of Food
19 Town Mart, he occupied a similar position to your job as floor
20 manager; correct?

13:26 21 A. Yes, sir.

13:26 22 Q. Generally doing the same thing; opening store, closing
23 store, making sure things are in order; correct?

13:26 24 A. Yes, sir.

13:26 25 Q. Mr. Hamed, I want to show you what's already been admitted

1 into evidence as Plaintiff's Exhibit 10 on the screen here. Do
2 you see that on the screen?

13:26 3 A. Yes, sir.

13:26 4 Q. Okay. Exhibit 10, sir, is a Facebook page. And the URL,
5 if you see in the very top left, it's facebook.com/
6 villardfoodtown, do you see that?

13:26 7 A. Yes, sir.

13:26 8 Q. Okay. And -- but the display name of the account, the one
9 that shows to people shows as Food Town Mart. Do you see that?

13:26 10 A. Yes, sir.

13:26 11 Q. The photo we're looking at at the top there of the store,
12 is that the store on 3217 Villard?

13:26 13 A. Yes, sir.

13:26 14 Q. Okay. And that's what it looks like today, perhaps minus
15 that red sign on the -- on the right of the store?

13:27 16 A. Minus the red sign and it's been painted.

13:27 17 Q. Okay. It's been painted since this photo was put up there;
18 correct?

13:27 19 A. Yes, sir. And the US Cellular sign is not up there.

13:27 20 Q. All right. This Food Town Mart Facebook page that we're
21 looking at here, this is Food Town Mart's Facebook page;
22 correct?

13:27 23 A. Yes, sir.

13:27 24 Q. And this is the page that you have been responsible for
25 maintaining since you took over the job from your brother;

1 correct?

13:27 2 A. Yes, sir.

13:27 3 Q. And prior to you, this was the Facebook page that your
4 brother was responsible for; correct?

13:27 5 A. Yes, sir.

13:27 6 Q. The -- if we scroll down just a little bit -- and I'm going
7 to make this bigger because I can't see it from here, my eyes
8 are bad -- if you see at the very bottom, you see there's a
9 date captured by FireShot 26 September, 2023, sir?

13:28 10 A. Yes, sir.

13:28 11 Q. All right. So I'm going to represent to you that this
12 screenshot was created in September of '23; okay? Is that okay
13 with you?

13:28 14 A. Okay. Yes, sir.

13:28 15 Q. Okay. Now, the most recent post that's showing here on
16 this Facebook account appears to be July 3rd, 2022. Do you see
17 that?

13:28 18 A. Yes, sir.

13:28 19 Q. Okay. Who was -- who was in charge of this Facebook page
20 in July of 2022?

13:28 21 A. Well, I was.

13:28 22 Q. You said you were?

13:28 23 A. Yes, sir.

13:28 24 Q. Okay. Now, this says, "Fresh chicken wings on sale \$2.49 a
25 pound." Do you see that?

13:28 1 A. Yes, sir.

13:28 2 Q. Okay. And you were the one that created that post;

3 correct?

13:28 4 A. Yes, sir.

13:28 5 Q. And if we look over here, like on the information for the

6 store, it has an address there; correct?

13:28 7 A. Yes, sir.

13:29 8 Q. And that's the 3217 West Villard that the store is actually

9 located at; correct?

13:29 10 A. Yes, sir.

13:29 11 Q. And there's also a phone number underneath that (414)

12 462-4300. Do you see that?

13:29 13 A. Yes, sir.

13:29 14 Q. That's the phone number for the store; correct?

13:29 15 A. Yes, sir.

13:29 16 Q. Okay. Let me go ahead and take that down for you.

13:29 17 Now, I'm going to put up on the screen another document

18 that's already been admitted as Plaintiff's Exhibit 5. Do you

19 see that on the screen, sir?

13:29 20 A. Yes, sir.

13:29 21 Q. Okay. Now, this is the same facebook.com/villardfoodtown

22 account; correct?

13:29 23 A. Yes, sir.

13:29 24 Q. But if you scroll to the bottom, this screenshot says it

25 was created on November 22nd, 2021. Do you see that?

13:29

1 A. Yes, sir.

13:29

2 Q. Okay. And we have here -- kind of the middle of the
3 screen, we have a Facebook post of September 28th, 2020. Do
4 you see that?

13:29

5 A. Yes, sir.

13:30

6 Q. You were in control of the Facebook page in September, 2020
7 when this post was made; correct?

13:30

8 A. Me and my brother were, yes, sir.

13:30

9 Q. Some combination of you and your brother; correct?

13:30

10 A. Yes, sir.

13:30

11 Q. But you yourself are the one that created this post;
12 correct?

13:30

13 A. Yes, sir.

13:30

14 Q. And you were a Food Town employee at the time that this
15 post was created; correct?

13:30

16 A. Yes, sir.

13:30

17 Q. This posting, if you look, it looks like there's three
18 different types of meat that are being discussed in the post;
19 correct?

13:30

20 A. Yes, sir.

13:30

21 Q. And the post has prices for each type of meat, 2.29 a pound
22 pork chops and so on; correct?

13:30

23 A. Yes, sir.

13:30

24 Q. And the information for how much the meat is being sold per
25 pound, that's not information that you independently knew;

1 correct?
13:31 2 A. No, sir.
13:31 3 Q. You had to get that information from someone; correct?
13:31 4 A. Yes, sir.
13:31 5 Q. And there's only two people that you can think of that
 6 information could have come from; right?
13:31 7 A. Yes, sir.
13:31 8 Q. One would have been the butcher that was employed at the
 9 store; correct?
13:31 10 A. Yes, sir.
13:31 11 Q. And the other would have been your father, who is the
 12 manager of everything; correct?
13:31 13 A. Yes, sir.
13:31 14 Q. Okay. But you don't recall whether it was the butcher or
 15 your father that told you pork chops 2.29 a pound, spare ribs
 16 1.99 a pound, you don't remember who gave you the information;
 17 correct?
13:31 18 A. I don't remember who gave me the prices, no, sir.
13:31 19 Q. Now, the photo that's at issue in this lawsuit is the pork
 20 chops, the boneless pork chops. It looks like there's four of
 21 them in the picture. Do you see that?
13:31 22 A. Yes, sir.
13:31 23 Q. Now, whether it's this photo or the other two photos, you
 24 would have gone through the same process to find that photo
 25 online and post it onto the Facebook page; correct?

13:31

1 A. Yes, sir.

13:32

2 Q. Okay. And that process -- to the extent it wasn't a photo
3 you took yourself, the process was you went on Google, you did
4 a search for fresh pork chops or boneless pork chops, it was
5 displayed on Google Images, and you chose an image you liked
6 and put it on the Facebook page; correct?

13:32

7 A. Yes, sir.

13:32

8 Q. And that's the same for the photo of chicken, the same for
9 the photo of spare ribs; correct?

13:32

10 A. Yes, sir.

13:32

11 Q. And just to clarify, you did not take the photograph of the
12 four pork chops at the top there; correct?

13:32

13 A. No, sir.

13:32

14 Q. Right. So that's not something you created with your own
15 camera, you went and you found that on Google by doing a search
16 and then put it on the Facebook page; correct?

13:32

17 A. Yes, on Google Images.

13:32

18 Q. Okay. And you don't know exactly what website that photo
19 was ultimately hosted on, correct, like whether it was my
20 client's website or some other website, you just know that it
21 showed up on Google Images; right?

13:33

22 A. Yes, sir.

13:33

23 Q. Your father, who is the manager of the store, never gave
24 you any instructions with respect to how to run this Facebook
25 page; correct?

13:33 1 A. My father doesn't even know that we have -- well, he didn't
2 know that he -- we had this Facebook page.

13:33 3 Q. You said your father didn't know that you had the Facebook
4 page?

13:33 5 A. No, sir. I didn't -- I never told him that I was posting
6 on Facebook. I never discussed with him what I'm posting on
7 this Facebook page.

13:33 8 Q. Okay. Mr. Hamed, in the deposition that you took last
9 year, do you remember being sworn in the same way you were
10 sworn in today giving an oath to tell the truth, whole truth,
11 nothing but the truth?

13:33 12 A. Yes, sir.

13:33 13 Q. And you testified truthfully in that deposition, correct?

13:33 14 A. Yes, sir.

13:33 15 Q. You didn't lie about anything; correct?

13:33 16 A. No, sir.

13:33 17 Q. Okay. Mr. Hamed, I want to show you your deposition, okay.
18 So if you see, this is a document that says, "Videoconference
19 Deposition of Amjad Sharif Hamed," and the date is December
20 18th, 2023?

13:34 21 A. Yes, sir.

13:34 22 Q. Okay. I'll represent to you this is your deposition, Mr.
23 Hamed. And this is just a record of everything that I asked
24 you and everything that you testified to; okay?

13:34 25 A. Yes, sir.

13:34 1 Q. I want to show you lines -- for your Honor, it's 45/18 to
2 45/20.

13:34 3 Mr. Hamed, in your deposition I asked you, "Was your father
4 aware that you were running the Facebook account for the
5 store?"

13:34 6 A. At that time, he did know.

13:34 7 Q. I'm sorry. Your answer was, "Yes, sir"; correct?

13:34 8 A. Yes, sir. At that time, he did know. This was after he
9 got a lawsuit for a Facebook page.

13:34 10 Q. So after the lawsuit was filed, your father knew that this
11 was the Facebook page for Food Town Mart; correct?

13:35 12 A. After the lawsuit came out, he asked me. I told him I had
13 posted that picture. He didn't know what it was or what was
14 going on because he didn't know that we had a Facebook page.

13:35 15 Q. Through today, your father has still not given you any
16 instructions as to how to run the Facebook page or what to post
17 or what not to post; correct?

13:35 18 A. No, sir. My dad barely knows how to get onto his phone.

13:35 19 Q. He barely knows how to get on a computer?

13:35 20 A. On a computer, to anything technical, technology.

13:35 21 Q. Okay. You're familiar with what a hookah is; correct?

13:35 22 A. Yes, sir.

13:35 23 Q. And at least over the course of the last four years, you've
24 sold hookahs at the Food Town Mart store; correct?

13:35 25 A. Yes, sir.

13:35 1 Q. And I apologize, let me just clarify. You said you're
2 familiar with what they are. Hasn't really come out as to what
3 they are. A hookah is a smoking device; correct?

13:36 4 MR. STEINLE: I object, Judge. I don't know what
5 relevance hookahs has to this lawsuit before this Court.

13:36 6 MR. DeSOUZA: Your Honor, if I may, Mr. Jaber
7 testified repeatedly that they've never sold these items in the
8 store.

13:36 9 MR. STEINLE: No, Judge --

13:36 10 THE COURT: It presupposes that he knows what they
11 are. You haven't had that demonstrated. You know, you're
12 trying to impute knowledge when the witness may not have the
13 knowledge and the details. It's no different than being
14 unfamiliar with technology, whether it's Facebook or computer
15 or cell phone.

13:36 16 BY MR. DeSOUZA:

13:36 17 Q. Mr. Hamed, you testified what a hookah is; correct?

13:36 18 A. Yes, sir.

13:36 19 Q. Okay. And your -- is your father familiar with the
20 products that are sold at the store?

13:37 21 MR. STEINLE: I object. How does he know what his
22 father thinks or knows?

13:37 23 THE COURT: Yeah. You can ask his father when he
24 testifies, Mr. DeSouza.

13:37 25 MR. DeSOUZA: Okay.

13:37 1 BY MR. DeSOUZA:

13:37 2 Q. Mr. Hamed, there is an inventory list that is kept at the

3 store; correct?

13:37 4 A. Yes, sir.

13:37 5 Q. All the products that you sell and have sold for the last

6 four years that you've worked there; correct?

13:37 7 A. Yes, sir.

13:37 8 Q. And that inventory list shows what you have in stock, what

9 you don't have in stock; correct?

13:37 10 A. Yes, sir.

13:37 11 Q. You have access to the inventory list; correct?

13:37 12 A. Yes, sir.

13:37 13 Q. Your father has access to that inventory list; correct?

13:37 14 A. Yes, sir.

13:37 15 Q. And products that you sell at the store are generally, if

16 they're in stock, they're kept out on the shelves somewhere in

17 the store; correct?

13:37 18 A. Yes, sir.

13:37 19 Q. Okay. Walk me through the layout of the store. I walk

20 into the front door of the store, and I'll -- I'll go ahead and

21 put Plaintiff's Exhibit 10 up again. Is -- am I correct that

22 the front door of the store is right over here where my mouse

23 pointer is, towards the left?

13:38 24 MR. STEINLE: Your Honor, I'm going object again. I

25 don't know what the layout of the store has to do with posting

1 of a picture on a Facebook page.

13:38 2 THE COURT: Yeah, I agree. Let's move on to get
3 before the jury relevant evidence, Mr. DeSouza. Everybody has
4 taken their time, whether it's the judge, my staff, these
5 jurors, and we're only here to deal with that which is
6 relevant.

13:38 7 MR. DeSOUZA: I understand, your Honor. I'm just
8 trying to establish for some of these photos that Mr. Jaber
9 testified about as not being his store for Mr. Hamed to tell us
10 where in the store these items would be located. It's a
11 brief --

13:38 12 THE COURT: Well, again, whether it's hookahs or cell
13 phones or computer software folios, he may not personally be
14 aware of these items. And they have nothing to do with this
15 photo posted on Facebook, so let's move on.

13:39 16 BY MR. DeSOUZA:

13:39 17 Q. Mr. Hamed, since you started working there and since your
18 brother gave the job to you for dealing with the Facebook
19 account, have you removed any photographs from the Facebook
20 page?

13:39 21 A. No, sir.

13:39 22 Q. Okay. Are you aware the photograph that we were looking at
23 before -- and I'll pull it up again, it was Exhibit 5 -- this
24 photograph was -- you agree this photograph was posted by you
25 on September 28th, 2020; correct?

13:39 1 A. Yes, sir.

13:39 2 Q. Are you aware that if one goes to the Facebook page today
3 that post is no longer there, the September 28th, 2020 post?

13:39 4 A. Yes, sir.

13:40 5 Q. You're aware that it's not there?

13:40 6 A. Yes, sir.

13:40 7 Q. Okay. Do you know who removed that post from the Facebook
8 page?

13:40 9 A. There's only two people that run that page. It's me and my
10 brother.

13:40 11 Q. And if you didn't do it?

13:40 12 A. Then it would be him.

13:40 13 Q. Okay. Did you discuss that with your brother as to the
14 removal of that post?

13:40 15 A. No, sir.

13:40 16 Q. Do you know when that post was removed?

13:40 17 A. No, sir.

13:40 18 Q. Is it fair to say that one would have to ask your brother
19 when it was removed and why to know the answer to those
20 questions?

13:40 21 A. He's the one that removed it. You would have to ask him,
22 yes, sir.

13:40 23 Q. Okay. Now, do you see, sir, that in this post which you
24 agree you're the one that put up, the Facebook account at the
25 time -- and, again, if you scroll to the bottom, you'll see

1 this was in November of 2021, okay?

13:40 2 A. Yes, sir.

13:40 3 Q. Do you see that the account that posted this was named
4 Villard Food Town at the time?

13:40 5 A. I do see that, yes, sir.

13:41 6 Q. Okay. And it's the same facebook.com/villardfoodtown
7 account up here; correct?

13:41 8 A. Yes, sir.

13:41 9 Q. Now, we looked at another screenshot that said Food Town
10 Mart, which you agree is the actual name of the store; correct?

13:41 11 A. Yes, sir.

13:41 12 Q. Okay. Again, do you know why the account changed from
13 Villard Food Town to Food Town Mart at some point after
14 November, 2021?

13:41 15 A. No, sir.

13:41 16 Q. Did you make that change?

13:41 17 A. No, sir.

13:41 18 Q. And, again, if that change was made, the only two people
19 that are in charge of the account or have access to it are you
20 and your older brother; correct?

13:41 21 A. Yes, sir.

13:41 22 Q. So same question, if you don't know, we'd have to ask your
23 brother; correct?

13:41 24 A. Yes, sir.

13:41 25 MR. DeSOUZA: Okay. I have no further questions for

1 Mr. Hamed, your Honor.

13:41 2 THE COURT: Thank you.

13:41 3 Mr. Steinle, do you wish to question the witness now or
4 during your case?

13:41 5 MR. STEINLE: In that this was an adverse examination,
6 your Honor, I -- I intend to call Mr. Hamed at the time of my
7 case in defense. And if I could reserve the right to -- I
8 don't have any questions in clarification of the --

13:42 9 THE COURT: Sure.

13:42 10 MR. STEINLE: -- adverse examination. But I would
11 reserve the right to call him on direct examination in any
12 case.

13:42 13 THE COURT: That's certainly agreeable.

13:42 14 MR. STEINLE: So at this point, I don't have any
15 clarification questions.

13:42 16 THE COURT: All right. Amjad Hamed, you may step
17 down. You may be called whether later today or tomorrow.

13:42 18 THE WITNESS: Thank you, your Honor.

13:42 19 (The witness is excused.)

13:42 20 THE COURT: Mr. DeSouza, you may call your next
21 witness.

13:42 22 MR. DeSOUZA: Yes, your Honor. Plaintiff calls Sharif
23 Jaber as our next witness.

13:43 24 THE CLERK: Please raise your right hand.

13:43 25 (The witness is sworn.)

13:43 1 THE WITNESS: Yes, I do.

13:43 2 THE CLERK: Thank you. Please be seated. Please

13:43 3 state your full name for the record and spell it for the court

13:43 4 reporter.

13:43 5 THE WITNESS: Sharif Jaber, S-H-A-R-I-F, J-A-B-E-R.

13:43 6 SHARIF JABER,

13:43 7 called by the Plaintiff as a witness herein, having been first

13:43 8 duly sworn, was examined and testified as follows:

13:43 9 DIRECT EXAMINATION

13:43 10 BY MR. DeSOUZA:

13:43 11 Q. Good afternoon, Mr. Jaber.

13:43 12 A. Good afternoon.

13:43 13 Q. Mr. Jaber, Nofal, LLC operates a grocery store in Milwaukee

13:43 14 under the name of Food Town Mart; correct?

13:43 15 A. Yes.

13:44 16 Q. And the address of that grocery store is 3217 West Villard;

13:44 17 correct?

13:44 18 A. Yes.

13:44 19 Q. You, sir, are the sole owner of Nofal, LLC; correct?

13:44 20 A. Yes.

13:44 21 Q. Okay. You're the only person that has control over the

13:44 22 business activities of Nofal, LLC; correct?

13:44 23 A. Yes, sir.

13:44 24 Q. There's no other -- there's no other executive of the

13:44 25 company besides yourself; correct?

13:44 1 A. No, just me and my kids.

13:44 2 Q. And you have been the owner of Nofal, LLC since sometime in

3 2017; correct?

13:44 4 A. Yes.

13:44 5 Q. I think that's when you bought the business from your

6 brother; right?

13:44 7 A. Yes, sir.

13:44 8 Q. Now, if Nofal, LLC makes money, that's profit that goes to

9 you; correct?

13:44 10 A. Yes, sir.

13:44 11 Q. All right. There's no other partners that get distributed

12 the money; correct?

13:44 13 A. No, sir.

13:45 14 Q. So when Nofal, LLC sells something, assuming it makes a

15 profit selling it, you make money off of that sale; correct?

13:45 16 A. Yes, sir.

13:45 17 Q. And the same way that when Nofal, LLC has to pay for

18 ordering products or something else, that's ultimately you have

19 to put up that expense; correct?

13:45 20 A. Yes, sir.

13:45 21 Q. Okay. Now, you gave a deposition in this case in October,

22 2023; do you recall that?

13:45 23 A. Yes, sir.

13:45 24 Q. I think that was the -- is that the first time you and I

25 talked, or have we talked before that?

13:45 1 A. No, we talked before.

13:45 2 Q. We talked before.

13:45 3 A. Yeah, when you take my deposition.

13:45 4 Q. Before the deposition, had we talked prior to that?

13:45 5 A. No.

13:45 6 Q. Okay. Now I want to show you, sir, what we've marked as

7 Plaintiff's Exhibit 27. Do you see that on the screen? I'm

8 sorry, I'll make it a little smaller so we can see the whole --

9 all right. Plaintiff's Exhibit 27 is a document titled Notice

10 of Taking Deposition of the Corporate Representative of Nofal,

11 LLC d/b/a Food Town Mart. Do you see that document, sir?

13:46 12 A. Yes.

13:46 13 Q. And you've seen -- you saw this document prior to your

14 deposition; correct?

13:46 15 A. Yes.

13:46 16 Q. Okay. And I'm going to scroll here. Do you see the date

17 was in August of 2023; correct?

13:46 18 A. Yes.

13:46 19 Q. And when I scroll a little bit further, there was various

20 deposition topics that were listed in this document. Do you

21 see that? I'm just going to scroll down to the bottom here.

22 It was a total of 32 different topics; correct?

13:46 23 A. Uh-huh.

13:46 24 Q. Yes?

13:46 25 A. Yes.

13:46 1 Q. Okay. Now, in that deposition that you took in October of
2 2023, you understood that you were testifying on behalf of
3 Nofal, LLC; correct?

13:46 4 A. Yes.

13:47 5 Q. It wasn't anybody else that testified on behalf of Nofal,
6 it was just you; correct?

13:47 7 A. Just me.

13:47 8 Q. And you understood that you were going to be testifying on
9 each of the topics that were identified in this document;
10 correct?

13:47 11 A. Yes.

13:47 12 Q. And you were prepared to testify with respect to all 32 of
13 those topics; correct?

13:47 14 A. Yes, sir.

13:47 15 Q. I want you to look at the first -- very first topic in this
16 document, sir. Very first topic was the identity of the person
17 purportedly responsible for uploading the work to the Facebook
18 page and/or website. Do you see that?

13:47 19 A. Yes.

13:47 20 Q. And you were prepared to give testimony with respect to
21 that topic; correct?

13:47 22 A. Yes.

13:47 23 Q. And the second topic was the relationship, if any, between
24 defendants, that's you and Nofal, and the person purportedly
25 responsible for uploading the work to the Facebook page and/or

1 the website. Do you see that?

13:47

2 A. Yes.

13:48

3 Q. And just to clarify, I'm going to scroll up just so we're
4 on the same page here, the definition of Facebook page in this
5 document is that same facebook.com/villardfoodtown that we have
6 been looking at all day.

13:48

7 A. I really don't know.

13:48

8 Q. Well, I'm just telling you. The definition for Facebook
9 page was that page, okay?

13:48

10 A. It could be.

13:48

11 Q. Okay. And the seventh topic was the factual circumstances
12 by which the work came to be published on the Facebook page
13 and/or the website. Do you see that?

13:48

14 A. Yeah.

13:48

15 Q. Okay. Now, in your deposition, there was a -- I guess it
16 was roughly a year ago in October of 2023. You testified that
17 Food Town Mart has never had a Facebook page; correct?

13:48

18 A. Not to my knowledge.

13:48

19 Q. Well, I'm just asking you what you testified to. That is
20 what you testified to --

13:48

21 A. Yes.

13:48

22 Q. -- correct?

13:48

23 A. I testified no.

13:49

24 Q. Okay. And as you sit here today, a year later, do you
25 still agree with that statement that Food Town Mart has never

1 had a Facebook page?

13:49 2 A. No. Right now I know that my kids have a Facebook page to
3 my business.

13:49 4 Q. Okay. And let me go ahead and take this down, sir.

13:49 5 MR. DeSOUZA: Actually, your Honor, I would ask that
6 Exhibit 27 be moved into evidence, which was the depo notice.

13:49 7 MR. STEINLE: No objection.

13:49 8 THE COURT: All right. The Court will receive Exhibit
9 27.

13:49 10 (Exhibit No. 27 was received in evidence.)

13:49 11 BY MR. DeSOUZA:

13:49 12 Q. All right. Mr. Jaber, I've put up Exhibit 10, which has
13 already been admitted into evidence. We've seen it a few times
14 today; correct?

13:49 15 A. Yes.

13:49 16 Q. Okay. And just so we're on the same page, is it your
17 understanding that -- well, I guess is that your store that
18 we're looking at in the picture there at the top?

13:50 19 A. Yes, it is.

13:50 20 Q. Okay. So the "You're Someone Special," that's what's there
21 at the store today; correct? That sign that says, "You're
22 Someone" --

13:50 23 A. That's just a saying.

13:50 24 Q. It's just a sign?

13:50 25 A. Yeah, it's just a sign.

13:50 1 Q. Okay. But I'm just asking it's there on the --
13:50 2 A. Yes, it is.
13:50 3 Q. Okay. And to your knowledge -- and you were here when your
4 son, Mr. Hamed, testified; correct?
13:50 5 A. Yes.
13:50 6 Q. And you heard him say that this is the Facebook page that
7 he was running on behalf of Food Town Mart; correct?
13:50 8 A. Yes.
13:50 9 Q. And do you agree, as you sit here today, this is the
10 Facebook page that was being run by Food Town Mart?
13:50 11 A. Yes.
13:50 12 Q. Okay. That sign over there, that red sign, I think that's
13 not there anymore; correct?
13:50 14 A. No, that's been removed ten years ago.
13:50 15 Q. But it says Villard Food Town; correct?
13:51 16 A. Yes, when my brother owns it.
13:51 17 Q. Okay. But you still have a sign, I think Mr. Hamed
18 testified, there's still a sign outside I think it's 50 feet
19 high or something that --
13:51 20 A. Yes.
13:51 21 Q. -- says Villard Food Town; correct?
13:51 22 A. Yes, it is.
13:51 23 Q. And you haven't changed that because it's just too
24 expensive to take down a sign from that height; right?
13:51 25 A. And I was not willing to do.

13:51 1 Q. Now, in your deposition, you testified that you have no
2 idea who owns this Facebook account; correct?
13:51 3 A. Yes.
13:51 4 Q. Sir, the topics for your deposition were who owns the
5 Facebook page, how did the photo end up on the Facebook page.
6 Other than talking to your attorney, you didn't talk to either
7 of your sons about the Facebook page; correct?
13:51 8 A. I never talked to my kids until I find out they had the
9 Facebook page.
13:51 10 Q. I mean, nothing stopped you from asking all of your
11 employees --
13:52 12 A. I just got a lawsuit, and I went to my lawyer.
13:52 13 Q. All right. Sir, let me finish the question, please, okay.
13:52 14 How many employees did you have at the time that this
15 lawsuit was filed?
13:52 16 A. Eight.
13:52 17 Q. So if we go back to the 2022 time frame when the lawsuit
18 was filed against you, there was about eight employees at the
19 store?
13:52 20 A. Uh-huh.
13:52 21 Q. Yes?
13:52 22 A. Yes.
13:52 23 Q. You were one of those employees; correct?
13:52 24 A. Yes.
13:52 25 Q. Okay. Your older son Nofal was no longer employed;

1 correct?

13:52 2 A. Yes.

13:52 3 Q. Your younger son -- or I don't know if you have more than
4 two sons, but Amjad Hamed was an employee at the store at the
5 time; correct?

13:52 6 A. Yes, sir.

13:52 7 Q. Other than yourself and your son, you had a butcher that
8 was employed at the store; correct?

13:52 9 A. Yes.

13:52 10 Q. I think had you some cashiers employed at the store?

13:52 11 A. Yes.

13:52 12 Q. Who else did you have employed?

13:53 13 A. I have stock boys. I have receiving guys.

13:53 14 Q. Did -- from -- from 2022 when you were sued in federal
15 court until October, 2023, you didn't ask a single one of your
16 employees, "Hey, who runs this Facebook page"; correct?

13:53 17 MR. STEINLE: Well, I object to the form. That
18 misstates the filing. He was sued in February of 2023, not
19 2022.

13:53 20 MR. DeSOUZA: I'll restate it, your Honor.

13:53 21 BY MR. DeSOUZA:

13:53 22 Q. From the date that you received the complaint in this
13:53 23 lawsuit, in 2023 or whenever it was --

13:53 24 A. Yes, it was February, '23, I went --

13:53 25 Q. So February of --

13:53 1 A. -- and asked my kids and I find out who runs this page.

13:53 2 Q. Well, you're saying when you received this lawsuit in

13:53 3 February of 2023 --

13:53 4 A. Yes.

13:53 5 Q. -- you asked your children who runs this Facebook page?

13:53 6 A. Yes.

13:54 7 Q. And that's both Nofal and Amjad?

13:54 8 A. Yes.

13:54 9 Q. Okay. And they didn't tell you, "It was me, I'm the one

13:54 10 running it"?

13:54 11 A. No, they told me.

13:54 12 Q. Okay. So they told you in that time frame in February,

13:54 13 2023 --

13:54 14 A. Yes.

13:54 15 Q. -- "I'm running the Facebook page"?

13:54 16 A. Okay.

13:54 17 Q. Okay. But, sir, your deposition was in October of 2023.

13:54 18 In October, 2023, you testified, "I have no idea who's running

13:54 19 the Facebook page"; yes?

13:54 20 A. Well, that's what you asked me, do you know who running the

13:54 21 Facebook page, which is I don't know, and I never did.

13:54 22 Q. Well, sir, if you -- if you knew from your sons in February

13:54 23 of 2023 when you got sued, when you got a copy of the

13:54 24 complaint --

13:54 25 A. Uh-huh.

13:54 1 Q. -- why would you testify in October, which is eight months
2 later, "I don't know who runs the Facebook page"?

13:54 3 A. I -- because I really don't know at that -- you know at
4 that time when the Facebook page was run.

13:55 5 Q. But you know it's your sons; yes?

13:55 6 A. Yes.

13:55 7 Q. And your sons told you this after you got sued; yes?

13:55 8 A. Yes.

13:55 9 Q. Sir, let me show you Exhibit 5. You were here when this
10 was admitted earlier today; correct?

13:55 11 A. Uh-huh.

13:55 12 Q. Yes?

13:55 13 A. Yes.

13:55 14 Q. I'm sorry, it's just for record --

13:55 15 A. Yes.

13:55 16 Q. -- we have to have a "yes" or "no."

13:55 17 A. Uh-huh.

13:55 18 Q. Sir, the Facebook account we're looking at is the same
19 Villard Food Town account that we've been looking the all day;
20 yes?

13:55 21 A. Yes.

13:55 22 Q. Okay. And we've got the photo, which is the alleged
23 infringement in this case. And you see that as on the Food
24 Town Mart Facebook page; correct?

13:55 25 A. Yes.

13:55 1 Q. You agree this is the Food Town Mart Facebook page on which
2 this photograph was on; correct?

13:56 3 A. I see now it is.

13:56 4 Q. Okay. But you're not saying this is not the Facebook page
5 from Food Town Mart; correct?

13:56 6 A. No. I'm not saying -- after I've seen it, I cannot
7 disagree.

13:56 8 Q. Okay. Now, in your deposition, sir, you testified under
9 oath that this was not an advertisement for the sale of the
10 items that are listed in here, this is not something that you
11 were selling or advertising at Food Town Mart. Would you like
12 to change that answer today?

13:56 13 A. Yes, I would. You asked me is it for advertising. I told
14 you we do not do advertising, because I don't know, oh, that's
15 my kids with the Facebook. This is for information only. It's
16 not an ad.

13:56 17 Q. Sir, you told me in your deposition this wasn't your
18 Facebook account at all, whether it's an ad or not, you said --

13:57 19 A. I know, it's not my -- it's not mine. Until today, I'll
20 tell you it's not mine.

13:57 21 Q. Well, I'm not asking you as Sharif Jaber, the individual.
22 You have your own personal Facebook page; correct?

13:57 23 A. Uh-huh.

13:57 24 Q. "Yes"?

13:57 25 A. Yes.

13:57 1 Q. So you -- you know what a Facebook page is; yes?

13:57 2 A. Uh-huh.

13:57 3 Q. "Yes"?

13:57 4 A. Yes.

13:57 5 Q. Okay. I know this is not your personal Facebook page, and

13:57 6 I'm not saying that, okay?

13:57 7 A. Uh-huh.

13:57 8 Q. Got it?

13:57 9 A. Yes.

13:57 10 Q. Okay. But this is the Facebook page for Food Town Mart

13:57 11 which is Nofal, LLC; yes?

13:57 12 A. Yes.

13:57 13 Q. In your deposition, you said Nofal, LLC does not have a

13:57 14 Facebook page; correct?

13:57 15 A. Correct.

13:57 16 MR. STEINLE: I object, asked and answered.

13:57 17 THE COURT: Yeah. We're -- both sides have made their

13:57 18 points, so let's move on, Mr. DeSouza.

13:57 19 BY MR. DeSOUZA:

13:58 20 Q. Mr. Jaber, at the time of your deposition, you could not

13:58 21 think of a single person when I asked you who could have put

13:58 22 this on the Facebook page, you could not think of a single

13:58 23 person; correct?

13:58 24 A. No.

13:58 25 Q. Notwithstanding that there were only eight employees at the

1 time, one of them was you and one of them was your son, you
2 couldn't identify anyone who possibly could have done this;
3 correct?

13:58 4 A. No.

13:58 5 Q. Sir, are you aware of what -- I'm sorry.

13:58 6 Your son Amjad, he testified that he's an employee at Food
7 Town Mart; correct?

13:58 8 A. Yes.

13:58 9 Q. And that's true he is an employee; yes?

13:58 10 A. Yes.

13:58 11 Q. He's worked there for about four years?

13:58 12 A. Yes.

13:58 13 Q. He testified that he is the floor manager, and that
14 involves opening the store, closing the store, organizing
15 items. Is that generally correct as to what he does?

13:59 16 A. Yes.

13:59 17 Q. And your other son Nofal, he worked at the store, but
18 doesn't work there today; correct?

13:59 19 A. Yes.

13:59 20 Q. Do you recall when he stopped working at the store?

13:59 21 A. Mmm, around 2021.

13:59 22 Q. Okay. Was it around the same time that Amjad --

13:59 23 A. Yes.

13:59 24 Q. -- took over?

13:59 25 A. Yes.

13:59 1 Q. And his position at the store, Nofal, was roughly the same
2 of what Amjad was; correct?
13:59 3 A. Yes, sir.
13:59 4 Q. Now, I asked you in your deposition how many employees did
5 Food Town Mart have in 2020 when this post was made, do you
6 recall that? Do you recall me asking you that question?
13:59 7 A. Maybe.
13:59 8 Q. You said maybe?
13:59 9 A. Yeah. You could ask me that question.
13:59 10 Q. Well, if you don't recall specifically, I could show you in
11 the transcript where I asked you. Do you want to see that?
14:00 12 A. That's what I'm saying, maybe you asked me.
14:00 13 Q. Okay. Well, let me help refresh you, sir. I am showing
14 you on the screen a copy of the transcript from your
15 deposition. Do you see it was September 26th, 2023?
14:00 16 A. Yes.
14:00 17 Q. Do you see that?
14:00 18 A. Uh-huh.
14:00 19 Q. Okay. So I'm going to go to Page 26. Just allow me to
20 scroll down a little bit here. Okay. You see we have Page 26
21 there on the left side of the screen? Over here, you see Page
22 26?
14:00 23 A. Yeah.
14:00 24 Q. Okay. So I asked you in your deposition: "How many
25 employees do you have or did you have in the September, 2020

1 time frame?" Do you see that?

14:00 2 A. Yes.

14:00 3 Q. And you said, "Six employees."

14:00 4 A. Six employees. Me and my son is eight.

14:00 5 Q. Okay.

14:00 6 A. It's the same answer.

14:00 7 Q. Okay. I'm just trying to make sure you -- you remember
8 that the question was asked, okay?

14:01 9 Now, I asked you who were the employees, and you told
10 me, at least back then, it was Mac McLaughlin, a guy named
11 Jose --

14:01 12 A. Uh-huh.

14:01 13 Q. -- a woman named Michelle, a gentleman named Tommy White,
14 and you.

14:01 15 A. Yes.

14:01 16 Q. You told me you're an employee, and those were the other
17 employees. Do you recall that?

14:01 18 A. Uh-huh.

14:01 19 Q. "Yes"?

14:01 20 A. Yes.

14:01 21 Q. Okay. Nofal Hamed was still an employee at the time of
22 2020; correct? You said 2021 is when he stopped?

14:01 23 A. Yes.

14:01 24 Q. So was he an employee?

14:01 25 A. Yeah.

14:01 1 Q. Okay. You didn't tell me about him as an employee at your
14:01 2 deposition, do you?
14:01 3 A. I don't know exact date when he was done with me.
14:01 4 Q. Okay. Well, what about Amjad Hamed? He was an employee in
14:01 5 2020; correct?
14:01 6 A. Yes.
14:01 7 Q. And you did not identify him as an employee of your store.
14:01 8 A. I don't call family members as employees.
14:02 9 Q. So you thought when I asked you who's an employee you could
14:02 10 just exclude family members as employees?
14:02 11 A. Yes.
14:02 12 MR. STEINLE: Well, I object. That's argumentative,
14:02 13 Judge.
14:02 14 THE COURT: Yeah.
14:02 15 MR. STEINLE: Plus relevance.
14:02 16 THE COURT: The facts are the facts. Let's move on,
14:02 17 Mr. DeSouza.
14:02 18 BY MR. DESOUZA:
14:02 19 Q. Mr. Jaber, Amjad Hamed reports to you, you as the boss of
14:02 20 the store; correct?
14:02 21 A. Yes.
14:02 22 Q. Prior to Amjad Hamed, the role was occupied by Nofal, and
14:02 23 he reported to you as the boss of the store; correct?
14:02 24 A. Yes.
14:02 25 Q. In fact, whether it's them or any of the other employees at

1 the store, everybody reports to you --

14:02 2 A. Yes.

14:02 3 Q. -- correct?

14:02 4 There's no mid-level manager between you and the
5 employees, it's just you; correct?

14:02 6 A. Yes.

14:03 7 Q. And you consider your son Amjad to be an honest person;
8 correct?

14:03 9 A. Yes.

14:03 10 Q. He tells the truth?

14:03 11 A. All the time.

14:03 12 Q. Okay. And you were here during his testimony; correct?

14:03 13 A. Yes.

14:03 14 Q. And he testified truthfully during his testimony that this
15 was the store, this is the Facebook page, and you guys did use
16 the photo at issue in this lawsuit; correct?

14:03 17 A. Yes.

14:03 18 Q. Okay. To your knowledge, did Nofal, LLC have permission
19 from Prepared Food to use the photo on its Facebook page?

14:03 20 A. No.

14:03 21 Q. Did Nofal, LLC ever reach out to Prepared Food and say,
22 "Hey, we'd like to license one or more of your photos?"

14:03 23 A. No, sir.

14:03 24 Q. Let me take this down for a moment.

14:04 25 I'd like to show you, sir, the most -- the governing

1 complaint in this lawsuit. It's a document that's been marked
2 as Plaintiff's Exhibit 25. Do you see that where it says
3 "Second Amended Complaint?"

14:04 4 A. Yes.

14:04 5 Q. Okay. And you'll see it identifies my client up here,
6 which is Prepared Food. Then it says the lawsuit is against
7 Nofal, LLC d/b/a Food Town Mart and Sharif Jaber. Do you see
8 that?

14:04 9 A. Uh-huh.

14:04 10 Q. "Yes"?

14:04 11 A. Yeah.

14:04 12 Q. Okay. Now, you read the complaint in this lawsuit after
13 you received it; correct?

14:04 14 A. Yes.

14:04 15 Q. And you understand this is the document where my client is
16 making allegations of copyright infringement against Nofal and
17 yourself; correct?

14:04 18 A. Yes.

14:05 19 Q. Okay. Now, if I scroll to Paragraph 18, sir, tell me if I
20 read this correctly, Paragraph 18 of this complaint says, "On
21 September 28th, 2020, after Plaintiff's above-referenced
22 copyright registration of the work, Nofal, LLC published the
23 work on its business Facebook page," at this long URL, "in
24 connection with the marketing of its business." And it shows
25 that screenshot we've been looking at. Do you see that?

14:05

1 A. Yes.

14:05

2 Q. Okay. So that was the allegation that my client made,
3 okay. I'm going to take that down for a moment.

14:05

4 MR. DeSOUZA: And, your Honor, just for the sake of
5 the record, I'd ask that Exhibit 20 -- 25, identified as 25, be
6 put into evidence.

14:05

7 MR. STEINLE: Well, I would object because it's
8 already a part of the record. It's a filed document with the
9 Court. I don't know --

14:05

10 THE COURT: Yeah. There's no reason to have it come
11 in as an exhibit. The objection is noted and sustained.

14:06

12 BY MR. DeSOUZA:

14:06

13 Q. Okay. Mr. Jaber, I'm going to put up on the screen
14 Plaintiff's Exhibit 26, which is a copy of Defendants Nofal,
15 LLC d/b/a Food Town Mart and Sharif Jaber answer and
16 affirmative defenses. Do you see that?

14:06

17 A. Uh-huh.

14:06

18 Q. "Yes"?

14:06

19 A. Yes.

14:06

20 Q. Okay. Do you understand this is your response to the
21 complaint, you and Nofal, what your response to the allegations
22 were?

14:06

23 A. Yes.

14:06

24 Q. Okay. And if I scroll all the way to the bottom, there's a
25 date on this that says February 20th, 2023; do you see that?

14:06

1 A. Yes.

14:06

2 Q. Okay. So if we go back to that Paragraph 18 that we were
3 looking at, read to me in February, 2023 what your response to
4 the allegation was.

14:07

5 MR. STEINLE: I object, Judge. This is an answer to a
6 complaint. The document -- there's no -- lack of foundation.
7 He didn't draft this document.

14:07

8 MR. DeSOUZA: Your Honor, this is the statement of the
9 defendants. It is their own statement. It is not hearsay.
10 It's an admission of a party opponent. Whether they drafted it
11 or not, this is their document.

14:07

12 THE COURT: Mr. Steinle, anything further?

14:07

13 MR. STEINLE: No, your Honor, the document was signed
14 by me as the lawyer for -- I answered the complaint on behalf
15 of the defendant. The defendant didn't sign the answer.

14:07

16 THE COURT: Yeah. I think with that understanding,
17 Mr. DeSouza, you can ask Mr. Jaber whether he agrees with that
18 statement in the answer or has a different view, but it's not
19 his, just like the posting of the photo wasn't done by Mr.
20 Jaber.

14:08

21 BY MR. DeSOUZA:

14:08

22 Q. Okay. Mr. Jaber, you see how there is a denial there in
23 Paragraph 18; correct?

14:08

24 A. Yes.

14:08

25 Q. Do you agree -- do you agree or believe that this statement

1 is inaccurate and needs to be changed in some way?

14:08 2 MR. STEINLE: Well, I'm going to object. Is he
3 talking as of today or is he talking as of the time that the
4 answer was drafted to the complaint?

14:08 5 BY MR. DeSOUZA:

14:08 6 Q. Mr. Jaber, as you sit here today, is that an accurate
7 denial? Do you believe that is inaccurate?

14:08 8 MR. STEINLE: No, I object. At the time that the
9 answer was drafted, he -- I believe, in my opinion, he can be
10 asked what he knew and what he understood. What he -- what has
11 happened over the last couple of years and the knowledge that
12 he's obtained and you ask him today, do you agree or disagree
13 with that, Judge, I object. That's -- that doesn't -- the time
14 frame doesn't jibe.

14:09 15 THE COURT: So unless, Mr. DeSouza, you're wanting to
16 define a particular timeline, including when the answer was
17 filed, the Court is prepared to sustain the objection.

14:09 18 MR. DeSOUZA: Okay. I'll ask a different question,
19 your Honor.

14:09 20 BY MR. DeSOUZA:

14:09 21 Q. You see that this document is dated February 20th, 2023;
22 correct?

14:09 23 A. Yes.

14:09 24 Q. You testified that in February, 2023, your sons disclosed
25 to you for the first time that this Facebook page belonged to

1 your store; correct? Sometime in February of 2023?

14:09 2 A. I don't know exactly what time; but, yeah, I know about it
3 after that.

14:09 4 Q. Okay. So at the time this answer was filed in February of
5 2023, did you believe that the Facebook page was not yours?

14:09 6 A. At that time, yes, I believed it wasn't mine.

14:09 7 Q. Okay. So if your -- if you had the conversation with your
8 sons in February of 2023, it must have been in the -- I'm
9 assuming eight days -- I don't think it was a leap year --
10 between the 20th and the end of the month; correct?

14:10 11 A. It could be after that. I don't recall exactly what time.
12 I say it's after February. I didn't -- what exact date.

14:10 13 Q. Okay. Sir, let's go ahead and look at Plaintiff's Exhibit
14 7. Plaintiff's Exhibit 7 is a copy of -- I believe it's two
15 documents. It's Nofal, LLC's responses to request for
16 admissions. And I believe it's followed up by your individual
17 responses to request for admissions. Do you see that?

14:11 18 A. Yes.

14:11 19 Q. Okay. And both of these documents are dated in August of
20 2023. I'll show you here's the one. Do you see the date of
21 August, 2023?

14:11 22 A. Yeah. Yes.

14:11 23 Q. And we have another one that's also dated August of 2023.
24 Do you see that?

14:11 25 A. Yes.

14:11 1 Q. Okay. Do you recall at some point in this lawsuit you were
14:11 2 asked to admit or deny certain facts --
14:11 3 A. Yes.
14:11 4 Q. -- in a document that said admit the sky is blue or admit
14:11 5 the grass is green. Obviously those questions weren't asked --
14:11 6 A. Yes.
14:11 7 Q. -- but essentially that. Okay.
14:11 8 Now, if we scroll -- and this is the Nofal one -- to No. 9,
14:11 9 in August of 2023, you were asked to: Admit that as of
14:11 10 September 28th, 2020, the work, which is the photograph, was
14:11 11 displayed on Nofal, LLC's Facebook page. And in August of
14:11 12 2023, you said "deny" correct?
14:12 13 A. Yes.
14:12 14 Q. If we look at No. 12, we asked you: Admit that Nofal, LLC
14:12 15 published and/or displayed the work on the Facebook page. And
14:12 16 you said "deny"; correct?
14:12 17 A. Correct.
14:12 18 Q. And, again, this is as of August, 2023; right?
14:12 19 A. Yes.
14:12 20 Q. Okay. In No. 15, we asked you: Admit that the Facebook
14:12 21 page is utilized to market and/or advertise Nofal, LLC's
14:12 22 business. Again, in August of 2023, you said "deny"; correct?
14:12 23 A. Deny.
14:12 24 Q. No. 16, we asked you: Admit that the work was displayed on
14:12 25 the Facebook page in connection with Nofal, LLC's efforts to

1 market its business. You said in August of 2023, "deny";
2 correct?

14:13 3 A. Correct.

14:13 4 Q. Now, as you sit here today, all of these admissions that I
5 have just looked at, you agree with me that they should be
6 admit, to your knowledge as of today; correct?

14:13 7 MR. STEINLE: I object, lack of foundation. The --
8 the document itself, the request to admit, contains photographs
9 of items other than the pork chop which is the subject matter
10 this lawsuit. And if he's going to try to question and impeach
11 this individual, he should show him the images on the request
12 to admit which include items that are not even part of this
13 lawsuit. So I would object that lack of foundation. That's my
14 objection.

14:13 15 THE COURT: And equally important, Mr. Steinle, is the
16 fact that the first interrogatory started with an introductory
17 phrase, "As of September 20th, 2020," not 2023, three years
18 later. The way the question was phrased asked the witness to
19 provide an answer as to what he knew at the time the photo was
20 posted. That's a lot different than learning subsequent to
21 being hailed into court with a lawsuit.

14:14 22 MR. DeSOUZA: Your Honor, I will say that none of
23 these requests for admissions that I have showed him thus far
24 concern any photograph other than the photograph at issue. Mr.
25 Steinle is referring to RFAs that start in the 30s or in the

1 40s. I have not asked him about that. I do not intend to ask
2 him about that. I am simply asking whether he agrees or does
3 not with these denials as we are looking at them.

14:14

4 THE COURT: Well --

14:14

5 MR. DeSOUZA: And I can cover them individually.

14:15

6 THE COURT: -- the problem is the denials were as of a
7 particular date. And as any reasonable litigant and judge and
8 lawyer understands, the dynamic of litigation is such that
9 answers that may be unknown at one point in the litigation
10 become better understood at some point later. But that does
11 not serve to impute to a party in a lawsuit knowledge as of a
12 particular date when they learned of it subsequently.

14:15

13 BY MR. DeSOUZA:

14:15

14 Q. Mr. Jaber, if we just look at No. 15 on the screen, do you
15 see that? Do you see No. 15 together with the response?

14:15

16 A. Yes.

14:16

17 Q. Okay. The question for No. 15 does not say, "Admit that as
18 of September, 2020," it simply says, "Admit that the Facebook
19 page," which is the Facebook page we've been discussing, "is
20 utilized to market and/or advertise Nofal, LLC's business." Do
21 you see that?

14:16

22 A. Yes.

14:16

23 Q. Okay. In August of 2023, you denied that; yes?

14:16

24 A. Yes.

14:16

25 Q. As you sit here today, do you believe that is a true

1 statement --

14:16 2 MR. STEINLE: I --

14:16 3 BY MR. DeSOUZA:

14:16 4 Q. -- that the Facebook page is utilized to market and/or
5 advertise Nofal, LLC's business?

14:16 6 MR. STEINLE: Once again, I object. He's using this
7 document to impeach this witness as to something that happened
8 in 2020 as opposed to four years later in 2024 as November of
9 2024, today's date, or October.

14:16 10 MR. DeSOUZA: Your Honor, I'm not even using the
11 document. I'm asking him a question. Does he acknowledge that
12 the Facebook page belongs to him as he sits here today.

14:17 13 THE COURT: Well, then take the document down and ask
14 him that question.

14:17 15 BY MR. DeSOUZA:

14:17 16 Q. Mr. Jaber, as you sit here today on October 28th, 2024, you
17 agree with me the Facebook page has been used to advertise or
18 market Nofal, LLC's business; correct?

14:17 19 A. Right now, yes.

14:17 20 Q. Okay. And all of the postings on that Facebook page,
21 whether they -- I think the last one -- the most recent one was
22 July of 2022 going back to the beginning of time --

14:17 23 A. But, sir, this Facebook was started for the business before
24 me.

14:17 25 Q. It was started for the business before you, but continued

1 after you bought the business; correct?

14:17 2 A. I don't know nothing about it.

14:17 3 Q. Well, sir, you bought the business in 2017; yes?

14:17 4 A. Yes.

14:18 5 Q. The most recent Facebook post we saw was July, 2022;
6 correct?

14:18 7 A. Yes.

14:18 8 Q. Okay. So 2022 comes after 2017, so the Facebook page
9 continued being used by your sons and your business after you
10 purchased it; correct?

14:18 11 A. Yes.

14:18 12 Q. Mr. Jaber, I would like to show you another one of these
13 documents. It's been identified as Plaintiff's Exhibit 8, and
14 this is Food Town Mart's answers to interrogatories. Do you
15 see that? Do you see the word "interrogatories" there?

14:18 16 A. Yes.

14:18 17 Q. Okay. And if I scroll to the bottom, this is another
18 document that's dated in August of 2023; correct?

14:18 19 A. Uh-huh.

14:18 20 Q. Yes?

14:18 21 A. Yes.

14:19 22 Q. And there's a signature here. Is that your signature?

14:19 23 A. Yes.

14:19 24 Q. And there's a notary signature here as well; correct?

14:19 25 A. Yes.

14:19 1 Q. Okay. Do you recall signing this document with a notary
2 there?

14:19 3 A. Yes.

14:19 4 Q. Okay. And you recall answering questions -- written
5 questions that were in this case; correct?

14:19 6 A. Yes.

14:19 7 Q. Okay. So in Interrogatory No. 2, sir, we asked Nofal:
8 Identify each and every commercial use of the work by you and
9 if such use involves publishing or displaying the work on the
10 website, the Facebook page, or any other social media page
11 controlled by you. Identify each subpage thereof on which the
12 work was published and/or displayed.

14:19 13 And Nofal's answer in August of 2023 was that Nofal, LLC
14 did not use the work commercially on any social media. Do you
15 see that?

14:20 16 A. Yes.

14:20 17 Q. In No. 3, sir, we asked you: Identify all websites and/or
18 social media pages controlled by you -- and that's Nofal, LLC
19 -- including any websites or social media pages you have
20 disabled, continued to remove from public view.

14:20 21 And the answer was: Food Town Mart and/or Nofal, LLC has
22 never had a website and has never had any social media pages.
23 Do you see that?

14:20 24 A. Yes.

14:20 25 Q. Okay. Now, as you sit here today, you know that to be an

1 inaccurate answer today based on your knowledge today; correct?

14:20 2 MR. STEINLE: Same objection that we talked about with
3 the requests for admissions, Judge. Are we talking about
4 September 28, 2020, or are we talking about the time that he
5 completed the interrogatory?

14:20 6 MR. DeSOUZA: I just asked him his knowledge as of
7 today, does he believe --

14:20 8 THE COURT: Well, the problem is, it's not Nofal, LLC
9 or Sharif Jaber. It's his sons, so they're independent.
10 That's what this whole case is about. This is not rocket
11 science.

14:21 12 MR. DeSOUZA: Your Honor, the sons are employees of
13 the store under Mr. Jaber's -- as the boss of the store, these
14 are employees that work for him.

14:21 15 THE COURT: That's well and true, but they could be
16 doing this quite independent of any employment relationship.
17 That's the problem.

14:21 18 BY MR. DeSOUZA:

14:21 19 Q. Mr. Jaber, Food Town Mart is a for-profit business;
20 correct?

14:21 21 A. Yes. It's for profits, yes.

14:21 22 Q. Okay. You sell meat at the store, yes?

14:21 23 A. Yes.

14:21 24 Q. There's a meat department?

14:21 25 A. Yes.

14:21 1 Q. And in that meat department, I assume they sell pork chops
2 as one of the meat products that are sold?

14:21 3 A. Yes.

14:21 4 Q. Are you aware that in this case -- and I think the Court
5 covered this at the beginning of the case -- you are asserting
6 what is known as a fair use defense?

14:22 7 A. Yes.

14:22 8 Q. Okay. Did Nofal, LLC use my client's photograph?

14:22 9 A. Right now, they -- no. Yes, they use.

14:22 10 Q. Okay. And it was used in connection with a September 28th,
11 2020 post to advertise or tell the world what the price of pork
12 chops were in your store; correct?

14:22 13 A. Yes.

14:22 14 Q. Sir, I want to put back on the screen this Plaintiff's
15 Exhibit 8, okay, that was the interrogatory responses we were
16 just looking at. I'm going to scroll to No. 17, sir. We asked
17 Nofal in No. 17: Describe in detail all factual support for
18 defendant's contention set forth in their third affirmative
19 defense that the claims of the plaintiff may be precluded by
20 the application of the fair use doctrine. Do you see that?

14:23 21 A. Yes.

14:23 22 Q. Okay. And your response was: As Nofal, LLC, Sharif Jaber
23 or Food Town Mart never used any copyrighted material on any
24 website or social media page. The affirmative defense of fair
25 use doctrine will be withdrawn. Do you see that?

14:23

1 A. Yes.

14:23

2 Q. But today you are asking the jury to find that your use of
3 this photograph was fair use; correct?

14:23

4 A. I'm not asking the Court to use -- to find the use fair.

14:24

5 Q. Well, you're either asserting the fair use defense or you
6 are not.

14:24

7 MR. STEINLE: Well, I object -- I object. That's a
8 legal conclusion for the Court to determine whether or not the
9 doctrine of fair use is applicable or not. It's factual --
10 factually driven, not what his opinion is.

14:24

11 THE COURT: Yes. You've made your point. It's a
12 legal question, and the Court will address it with counsel at
13 the appropriate time.

14:24

14 BY MR. DeSOUZA:

14:24

15 Q. Mr. Jaber, are you aware that in August of 2023, you served
16 documents in this lawsuit stating that the fair use defense
17 will be withdrawn? Whatever it is.

14:24

18 MR. STEINLE: Same objection.

14:24

19 THE COURT: Sustained.

14:24

20 BY MR. DeSOUZA:

14:24

21 Q. Mr. Jaber, when the 2.29 a pound pork chop photo went up on
22 your Facebook page, do you believe that was for purposes of
23 criticizing anything?

14:25

24 A. Not to my knowledge.

14:25

25 Q. Was it for parody, were you making fun of something or

1 making light of something?

14:25 2 A. Not to any knowledge.

14:25 3 Q. Was there commentary on the photograph, "Everybody look at
4 this, photograph, it's" -- were you commenting on something?

14:25 5 A. No.

14:25 6 Q. What about news reporting? Was this to report news about
7 something?

14:25 8 A. No.

14:25 9 Q. Teaching, did it have anything to do with teaching?

14:25 10 A. No.

14:25 11 Q. Did it have anything to do with scholarship, education, in
12 any way, shape, or form?

14:25 13 A. No.

14:25 14 Q. What about research? Did it have anything to do with
15 research?

14:25 16 A. No.

14:25 17 Q. Didn't fit in any of those categories that I just said;
18 correct?

14:25 19 A. No.

14:25 20 Q. The point of the post at the time was to tell prospective
21 customers the price of pork chops in your store; correct?

14:26 22 A. I believe so.

14:26 23 Q. You believe so?

14:26 24 A. Well, I don't -- I don't do it. My kids done it, so I
25 don't know what was in their mind.

14:26 1 Q. Well, whether it was Nofal or whether it was Amjad, both of
2 those children -- and they were adults at the time, correct --
14:26 3 A. Yes.
14:26 4 Q. -- in 2020? How old was Amjad in 2020? It's four years
5 ago.
14:26 6 A. 21.
14:26 7 Q. He was 21?
14:26 8 A. Uh-huh.
14:26 9 Q. So he was an adult; yes?
14:26 10 A. Yes.
14:26 11 Q. And his brother was four years older, 25?
14:26 12 A. Yes.
14:26 13 Q. Okay. And they were the -- essentially the floor manager,
14 manager who's not you; correct?
14:26 15 A. Yes.
14:26 16 Q. Is floor manager essentially they're in charge if Sharif
17 Jaber is not out on the floor?
14:26 18 A. Yes. They are in charge of everything.
14:26 19 Q. Okay. And did you ever define their specific roles at the
20 company, like is there a document that says: You are
21 responsible for doing A, B, and C, and nothing else?
14:26 22 A. No.
14:27 23 Q. Is it essentially they help out doing whatever you're not
24 doing at the time?
14:27 25 A. Exactly.

14:27 1 Q. And it's a problem with an employee, do they take care of?

14:27 2 A. Yes.

14:27 3 Q. If things need to be ordered and you're not around, do they

14:27 4 take care of it?

14:27 5 A. Yes.

14:27 6 Q. Store needs to be opened or closed, you're not around, they

14:27 7 take care of it?

14:27 8 A. Yes.

14:27 9 Q. And as you sit here today, you now know that one of their

14:27 10 jobs was -- or at least one of the activities they did on

14:27 11 behalf of the store was running the Facebook page; correct?

14:27 12 MR. STEINLE: I object. This is asked and answered

14:27 13 multiple times.

14:27 14 THE COURT: Yes. Time to move on, Mr. DeSouza.

14:27 15 MR. DESOUZA: I have no further questions for him,

14:27 16 your Honor.

14:27 17 THE COURT: Thank you.

14:27 18 Do you have any preliminary questions, Mr. Steinle?

14:27 19 MR. STEINLE: Judge, just as with Amjad Hamed, I

14:27 20 intend to call Mr. Sharif -- Mr. Jaber at the time of my direct

14:27 21 examination on the defense. I would reserve the right to

14:27 22 question him at that time, sir. I have no questions in

14:27 23 clarification at this point.

14:28 24 THE COURT: Very well. Mr. Jaber, you may step down.

14:28 25 THE WITNESS: Thank you.

14:28 1 THE COURT: You're subject to being re-called by your
14:28 2 counsel.

14:28 3 THE WITNESS: Thank you.

14:28 4 (The witness is excused.)

14:28 5 THE COURT: Mr. DeSouza, you may call your next
14:28 6 witness.

14:28 7 MR. DESOUZA: Your Honor, the plaintiff rests at this
14:28 8 time.

14:28 9 THE COURT: Thank you.

14:28 10 Mr. Steinle, do you have any additional evidence you wish
14:28 11 to --

14:28 12 MR. STEINLE: I do, your Honor. But I have a number
14:28 13 of motions that I would like to make at this point in time.

14:28 14 THE COURT: All right. Members of the jury, the Court
14:28 15 has a number of matters to address with counsel. I'm going to
14:28 16 excuse you, again, with the admonition I've given you
14:28 17 throughout, and that is: Please do not discuss the case among
14:28 18 yourselves during this recess. It's a little early for an
14:28 19 afternoon recess. But continue to keep in mind the obligation
14:28 20 to remain free of any improper influences from your fellow
14:28 21 jurors. We haven't finished all of the evidence and testimony
14:28 22 much less the Court's instructions on the law or the closing
14:28 23 arguments of counsel.

14:29 24 As soon as the Court is ready to proceed, we'll invite you
14:29 25 back. In the meantime, please leave your notebooks on your

1 chair.

14:29 2 The Court stands in recess insofar as the jury is
3 concerned.

14:29 4 COURT SECURITY OFFICER: All rise.

14:29 5 (The jury left the courtroom.)

14:30 6 COURT SECURITY OFFICER: You can be seated.

14:30 7 THE COURT: Mr. Steinle.

14:30 8 MR. STEINLE: My first motion is for a directed
9 verdict at this stage, a dismissal of the plaintiff's claims.
10 I would move to dismiss the claim of copyright violation
11 because the plaintiff has the burden of proof. And the
12 plaintiff failed to establish, other than the fact that the
13 store was bought, we do -- it is uncontested Villard Food
14 Town URL was created before Mr. Sharif Jaber purchased the
15 store.

14:30 16 The website was utilized, but there is no evidence -- and
17 the plaintiff has the burden of proof -- to prove that they
18 created the website on behalf of the defendant, Nofal and
19 Sharif Jaber. There is no evidence that that was -- was it
20 utilized? Yes. But that doesn't -- that doesn't establish
21 ownership. He has to establish ownership of that website to
22 prove that there was a copyright violation on behalf of Nofal.
23 And he has failed to do that. And for that reason, I'm moving
24 to dismiss the copyright violation.

14:31 25 Secondly, the second motion that I'm making is to dismiss

1 the vicarious liability claim. The elements of vicarious
2 liability clearly state, unequivocally state that he has to
3 prove Sharif -- this is vicarious liability that Sharif Jaber
4 himself profited from the use of this picture of a pork chop.
5 There is -- the record is absolutely replete with any evidence
6 that Sharif Jaber -- generally does the store make money? Of
7 course. That's not the issue. The issue is whether Sharif
8 personally profited from the use of one photograph that was
9 used in 2020. And there is no, absolutely no evidence that
10 Sharif -- and I think the Court must grant the motion
11 dismissing the vicarious liability claims in this particular --
12 in this particular case.

14:32 13 Third motion, there is an allegation of willfulness in the
14 complaint, and I'm moving to dismiss any -- dismiss that count
15 in the complaint because, once again, there is absolutely no
16 evidence of willfulness on the part of Mr. Jaber or on the part
17 of Nofal. Was the picture of -- the one picture of the pork
18 chop used? Yes. That doesn't rise to the level of
19 willfulness. That doesn't rise to the level -- and, again, the
20 plaintiff has now rested.

14:32 21 This is their case. And what we're left with is we're left
22 with a website that doesn't even -- isn't even owned by Nofal.
23 We're left with a picture of a pork chop that's posted on a
24 website that was utilized by, but the URL was never changed.
25 We are left with a lawsuit against my client that's claiming

1 vicarious liability when there's no evidence that he personally
2 profited. And we're left with a lawsuit asserting a claim of
3 willfulness on the part of my client, and there is no evidence.

14:33

4 I'm moving to dismiss the case in the entirety. And in the
5 alternative, I'm asking the Court to dismiss -- or, I mean, to
6 grant the motion dismissing the claims of vicarious liability
7 and willfulness.

14:33

8 THE COURT: All right. Thank you.

14:33

9 Mr. DeSouza?

14:33

10 MR. DESOUZA: Your Honor, I'll tackle them in order.

11 Mr. Steinle said it's uncontroverted the Facebook page was
12 created before 2017 and that the law says we have the burden of
13 showing that the Facebook page itself was created on behalf of
14 Nofal, LLC. That is not the law on this subject, your Honor.
15 Mr. Jaber clearly testified that he took ownership of this
16 store in 2017. The son testified this photo was published in
17 2017 on behalf of Food Town Mart which is Nofal, LLC and
18 displayed on its Facebook page.

14:34

19 The underlying website does not have to be created on
20 behalf -- or Facebook page does not have to be created on
21 behalf of this defendant. This defendant took ownership of
22 this store in 2017.

14:34

23 THE COURT: But does taking ownership of the store
24 carry with it any ownership of the Facebook page that --
25 whether it's family, friends, or others have used?

14:34

1 MR. DeSOUZA: Well, whether it does or not, your
2 Honor, the law on copyright infringement is who published or
3 who displayed it. The uncontroverted testimony is that
4 employees of Nofal, LLC -- not of the Villard Food Town or any
5 prior owner -- employees of the defendant in this lawsuit
6 caused the photograph to be displayed on a site. It does not
7 have to be on your site. It could be a third-party site. It
8 could be Yelp. It could be any different type of third-party
9 site.

14:35

10 If you cause the work to be displayed and you are an
11 employee -- and obviously in terms of respondeat superior,
12 you're an employee of Nofal. They did not testify that they
13 are an employee of any other entity. And he testified very
14 clearly he published this on behalf of Nofal, LLC. So it's a
15 red herring to say, well, the Facebook page was created in --
16 you know, prior to 2017. It doesn't matter. What matters is
17 who's the one that caused it to be displayed, and it cannot be
18 -- it cannot be that an employee of some other company caused
19 it to be displayed when the uncontroverted testimony is it was
20 the employee of this store.

14:36

21 THE COURT: If the employer is unknowing of the
22 posting, how -- what is the principle of law that makes the
23 employer liable?

14:36

24 MR. DeSOUZA: The employer is liable for actions of
25 its employees in the scope of their employment, your Honor.

14:36 1 THE COURT: Oh, now you've hit the operative word,
2 scope of their employment. Where is there in this case any
3 allegation, much less proof that what was done here was within
4 the scope of their employment?

14:36 5 MR. DeSOUZA: And your Honor --

14:36 6 THE COURT: And particularly when it's unbeknownst by
7 the employer?

14:36 8 MR. DeSOUZA: Well, the employer says unbeknownst,
9 your Honor. It's a factual dispute issue as to whether he knew
10 or not and when he knew it. At one point he testified I knew
11 in February, 2023. Yet in October of 2023, in August of 2023,
12 he's saying, no, I didn't.

14:37 13 THE COURT: Oh, but that was as of the date of the
14 posting. That's clearly what the import of both those
15 questions and the answers were.

14:37 16 MR. DeSOUZA: There is -- there is one question, your
17 Honor, that says, "Admit that as of September 28th, 2020."
18 Everything else very clearly says, "You used the photo, you
19 used on your website," there is denial. Mr. Jaber has now said
20 I admit we used the photo, which would be on the website.
21 Whether the employer knew about it or not is not the question,
22 your Honor.

14:37 23 The question -- and I would agree, if one of the employees
24 got in a car, went to a bar, and got into a fight and injured
25 someone, it's clearly not within the scope of that person's

1 employment. It's not in furtherance of the job that they're to
2 do. It's not like it's a laundry store and they went and they
3 got into a fight and hurt someone. This is a grocery store,
4 your Honor, that advertises its prices and its products on its
5 social media page. And its manager, the only manager that is
6 not the ultimate boss of the store, went online, got the
7 information from either his father or butcher for purposes of
8 putting this out.

14:38 9 He testified, "My father knew about the Facebook page." He
10 testified, "My father knew about the Facebook page. Either my
11 father or the butcher is the one that gave me the information
12 from which to put on the Facebook page," and this is a job that
13 was occupied by him for four years and for his brother for four
14 years before that. The brother hasn't testified yet. I
15 understand that. But he's already testified, "My brother did
16 this for years. I did this for years in furtherance of our
17 job."

14:39 18 Now, whether the employer knew they did this or not, it
19 would be the same question as employer, you know, talks badly
20 to someone in the store, employer -- I'm sorry, the employee
21 takes some action, someone talks back to him and he slaps
22 someone at the cashier business. The employer doesn't have to
23 know about that. There's nothing in the law that says the
24 employer knew that this guy was violent or that he was going to
25 do this or he was going to do that. But if that employee was

1 acting within the scope of the employment --

14:39 2 THE COURT: Your example is far different than someone
3 posting something on the computer at home, et cetera.

14:39 4 MR. DeSOUZA: And -- but, your Honor --

14:39 5 THE COURT: To cut to the chase, what the Court is
6 going to do is since both sides wanted a jury trial, we never
7 got through the dispositive motions because counsel failed to
8 comply with the Court's protocols, the case is going to go to a
9 jury. Mr. Steinle has made his record. We're going to let the
10 jury see what it will do with the facts as they find them.

14:40 11 So I'm going to invite the jury back. Hopefully we'll
12 finish the testimony today. We'll have a jury instruction
13 conference tomorrow morning and instruct at 1:00 tomorrow and
14 argue.

14:40 15 You may invite the jury in.

14:40 16 MR. STEINLE: Your Honor, may I have five minutes to
17 run to the men's room, please?

14:40 18 THE COURT: Certainly.

14:40 19 COURT SECURITY OFFICER: All rise for the jury.

14:40 20 (The jury entered the courtroom.)

14:41 21 (The court is called to order.)

14:41 22 THE COURT: Members of the jury, the Court will be
23 ready to proceed with further testimony. Mr. Steinle is using
24 the men's room. And as soon as he returns, he will call his
25 first witness.

14:42 1 Members of the jury, and I'm sure you've heard this both in
2 the courtroom and perhaps the jury room as well, there's an
3 audible noise interference. And I believe it may be coming
4 from the building fire alarm system. They put in a new system.
5 It was tested last Friday. On Saturday, all of the power in
6 the building was shut off. We Energies had to do some
7 interface work. And the audible sound is not the fire alarm,
8 and it's not anything we need to be concerned with, other than
9 it's a nuisance.

14:42 10 Mr. Steinle, you may call your next witness.

14:42 11 MR. STEINLE: I will call Sharif Jaber to the stand,
12 please.

14:43 13 THE COURT: Mr. Jaber, you're under the same oath you
14 took when you began your testimony.

14:43 15 THE WITNESS: Okay.

14:43 16 THE COURT: You may proceed --

14:43 17 MR. STEINLE: Thank you, your Honor.

14:43 18 THE COURT: -- Mr. Steinle.

14:43 19 MR. STEINLE: Thank you, your Honor.

14:43 20 SHARIF JABER,

14:43 21 called by the Defendants as a witness herein, having been
22 previously duly sworn, was examined and testified as follows:

14:43 23 DIRECT EXAMINATION

14:43 24 BY MR. STEINLE:

14:43 25 Q. Good afternoon, Mr. Jaber.

14:43 1 A. Good afternoon.

14:43 2 Q. When did you come to this country?

14:43 3 A. In 1991.

14:43 4 Q. And are you currently a citizen of the United States?

14:43 5 A. Yes, I am.

14:43 6 Q. And where do you reside? Where do you live?

14:43 7 A. In Oak Creek.

14:43 8 Q. You married?

14:43 9 A. Yes.

14:43 10 Q. How many children do you have?

14:43 11 A. Seven.

14:43 12 Q. When you first came to the country after getting
13 established, what business did you go in?

14:44 14 A. Grocery stores.

14:44 15 Q. And at some point in time, were you hired by a company
16 named Villard Food Town?

14:44 17 A. Yes.

14:44 18 Q. And do you know who owned Villard Food Town?

14:44 19 A. My brother.

14:44 20 Q. And what's his name?

14:44 21 A. Faraj Jaber.

14:44 22 Q. And do they call him Frank?

14:44 23 A. Frank, yes.

14:44 24 Q. And do you remember approximately what year you were hired?

14:44 25 A. 2004.

14:44 1 Q. Just a little bit about Villard Food Town. Where is
2 Villard Food Town -- we established Villard Food Town is on
3 Villard Avenue; right?
14:44 4 A. 3217 West Villard Avenue.
14:44 5 Q. And a grocery store?
14:44 6 A. Yes.
14:44 7 Q. Principally groceries?
14:44 8 A. Yeah, groceries, a little bit extras.
14:44 9 Q. And when you were hired, what were you hired as? What
10 position?
14:44 11 A. As a manager.
14:44 12 Q. And then did you keep that same job until sometime later?
14:44 13 A. Yes.
14:45 14 Q. Now, Villard Food Town, is Villard Food Town a stand-alone
15 store or are they part of any big chain?
14:45 16 A. No, just individual.
14:45 17 Q. And family run?
14:45 18 A. Family owned and run.
14:45 19 Q. Now, during the course of the years that you were with
20 Frank, did you and he talk about you buying the business at
21 some point?
14:45 22 A. Yes.
14:45 23 Q. And did you eventually buy the business?
14:45 24 A. Yes, I did.
14:45 25 Q. And that occurred in what year?

14:45 1 A. 2017.

14:45 2 Q. And in addition -- strike the question.

14:45 3 Did you -- when you bought the purchase -- or bought the

4 business, did you create a limited liability company to run the

5 business?

14:45 6 A. Yes.

14:45 7 Q. And what was the name of the LLC?

14:45 8 A. Nofal, LLC.

14:45 9 Q. And Nofal, LLC was the entity that bought the business?

14:45 10 A. Yes.

14:45 11 Q. And Nofal, LLC is the entity that operates that business?

14:46 12 A. Yes.

14:46 13 Q. In addition to changing the actual ownership of the

14 business, did you also change the name of the business, the

15 d/b/a?

14:46 16 A. Yes.

14:46 17 Q. And what did you change it to?

14:46 18 A. Food Town Mart.

14:46 19 Q. Now, we've seen a lot of photographs, and we've heard

20 testimony about signage on the store. The prior name was

21 Villard Food Town?

14:46 22 A. Yes.

14:46 23 Q. And there's still -- today there's still signs with Villard

24 Food Town out there?

14:46 25 A. Yes, sir.

14:46 1 Q. And why are those signs still out there, sir?

14:46 2 A. Because I cannot afford to change it.

14:46 3 Q. For example, there's a very high sign on posts, that type

14:46 4 of thing?

14:46 5 A. Yes.

14:46 6 Q. Did you get an estimate as to what it would cost to remove

14:46 7 those signs?

14:46 8 A. \$40,000.

14:46 9 MR. DeSOUZA: Objection, relevance.

14:46 10 MR. STEINLE: I'll move through it.

14:46 11 BY MR. STEINLE:

14:47 12 Q. Prior to purchasing the store, prior to purchasing the

14:47 13 store, were you aware of what Frank was -- Frank Jaber was

14:47 14 doing in terms of advertising or anything like that?

14:47 15 A. No.

14:47 16 Q. Prior to purchasing the store, were you ever aware that

14:47 17 Villard Food Town had a Facebook page?

14:47 18 A. No.

14:47 19 Q. Now, in addition to you working at the store, were there

14:47 20 other family members, your family members, working at the

14:47 21 store?

14:47 22 A. Yes.

14:47 23 Q. And who?

14:47 24 A. My son.

14:47 25 Q. Nofal?

14:47

1 A. Nofal.

14:47

2 Q. And I've asked you one way. I'm going to ask it a
3 different way. Did Nofal ever tell you that there was --

14:47

4 MR. DeSOUZA: Objection, hearsay.

14:47

5 THE COURT: Well, he's going to testify, so --

14:47

6 MR. STEINLE: Strike -- I'll rephrase the question.

14:47

7 BY MR. STEINLE:

14:48

8 Q. Were you ever made aware that there was any -- any Facebook
9 page for Villard Food Town?

14:48

10 A. No.

14:48

11 Q. After the purchase of the business, was it your intent to
12 essentially run it as it was run in the past?

14:48

13 A. Yes.

14:48

14 Q. Mr. Jaber, are you familiar with the internet?

14:48

15 A. No.

14:48

16 Q. And have you yourself done anything as it relates to Nofal,
17 LLC, you yourself, on the internet?

14:48

18 A. No.

14:49

19 Q. Have you yourself done anything as it relates to any
20 websites for Food Town?

14:49

21 A. No, sir.

14:49

22 Q. Have you yourself, sir, done anything as it relates to any
23 social media or Facebook pages as it relates to Food Town?

14:49

24 A. No, sir.

14:49

25 Q. Did you at any point in time, sir, or did anyone at your

1 request, create a separate URL Facebook page for Food Town or
2 Nofal, LLC?

14:49 3 A. No, sir.

14:49 4 Q. At any point in time, at any point in time up until the
5 time that you were sued, did you even ever physically see the
6 Facebook page?

14:49 7 A. No, sir.

14:49 8 Q. Hypothetically, if No -- excuse me -- if Amjad came up to
9 you and said, "What's the price of pork chops this week," would
10 you answer him?

14:50 11 MR. DeSOUZA: Objection, speculation.

14:50 12 MR. STEINLE: It's a hypothetical.

14:50 13 THE COURT: Mr. Jaber, do you know what the price of
14 pork chops is today?

14:50 15 THE WITNESS: Yes.

14:50 16 THE COURT: What is it, per found?

14:50 17 THE WITNESS: 3.99.

14:50 18 BY MR. STEINLE:

14:50 19 Q. If -- if Amjad were to ask you on any particular day what
20 the price of pork chops is, would you answer your son?

14:50 21 A. Yes.

14:50 22 Q. Would you ask him why he's asking that question?

14:50 23 A. No.

14:50 24 Q. At some point in time, you became aware that the plaintiff,
25 Prepared Foods, had made a claim that you personally and Nofal

1 copyrighted material, you became aware of that; yes?

14:51 2 A. Yes.

14:51 3 Q. And when was that, sir?

14:51 4 A. In February.

14:51 5 Q. 2023?

14:51 6 A. Three, yeah.

14:51 7 Q. When you were sued?

14:51 8 A. Yes.

14:51 9 Q. At any point in time, Mr. Jaber, in 20 -- in November of
10 2021, did you ever receive notice of an infringement violation
11 from Prepared Foods?

14:51 12 A. No.

14:51 13 Q. Did anybody ever inform you of a infringement violation in
14 November of 2021; sir?

14:51 15 A. No.

14:51 16 Q. And between 2021, in November of 2021, and February of
17 2023, were you ever made aware from anybody --

14:51 18 A. No.

14:51 19 Q. -- about an alleged infringement violation, sir?

14:51 20 A. No.

14:51 21 Q. Did you ever receive a letter -- you saw the letter to
22 Faraj Jaber, did you not, sir?

14:51 23 A. Yeah.

14:51 24 Q. During the course of this trial, you saw the letter?

14:52 25 A. I saw it.

14:52 1 Q. From Mr. DeSouza, you saw that letter?

14:52 2 A. Uh-huh.

14:52 3 Q. Did you ever receive a letter like that at any point in

14:52 4 time prior --

14:52 5 A. No.

14:52 6 Q. -- to being sued?

14:52 7 A. No.

14:52 8 Q. Did you ever receive any e-mails from Prepared Food?

14:52 9 A. No.

14:52 10 Q. About an alleged violation?

14:52 11 A. No.

14:52 12 Q. Did you receive any phone calls --

14:52 13 A. No.

14:52 14 Q. -- from anybody about an alleged violation?

14:52 15 A. No, sir.

14:52 16 Q. When you received the second amended summons and complaint

14:52 17 in February of 2023, sir, do you remember how you received it?

14:52 18 Did somebody come in and serve you with paperwork?

14:52 19 A. Yes.

14:52 20 Q. So you were physically served with that paperwork?

14:53 21 A. Yes, sir.

14:53 22 Q. And that's the first time you learned anything?

14:53 23 A. Yes.

14:53 24 Q. Have you, Mr. Jaber, received -- you, have you personally

14:53 25 received any financial benefit that you can quantify any way by

1 the use of a photograph of a pork chop on Food Mart's Facebook
2 page? Have you received any benefit at all personally,
3 compensation?

14:53 4 A. No.

14:54 5 Q. Just a final couple questions. You've now seen the alleged
6 violation from September 28th of 2020, have you not? You've
7 seen the --

14:54 8 A. Yes.

14:54 9 Q. -- the post?

14:54 10 A. Yes.

14:54 11 Q. Or you've seen a screenshot of it; right?

14:54 12 A. Yes.

14:54 13 Q. And was that for -- was that for a sale of pork chops at
14 that particular point in time?

14:54 15 A. I don't believe so.

14:54 16 Q. So what was -- what was the purpose of, in your mind, now
17 that you see it, what was the purpose?

14:55 18 A. Just probably informational.

14:55 19 Q. The store that you run, it's located on 27th and Vliet, is
20 on the inner city of Milwaukee?

14:55 21 A. 3217.

14:55 22 Q. Excuse me.

14:55 23 A. Yes, it's in City of Milwaukee, Wisconsin.

14:55 24 Q. Okay. And does your store service the local residents?

14:55 25 A. Yes.

14:55 1 Q. So when you post something like that, if you're aware, is
2 the post primarily for the local people?

14:55 3 A. Probably. I don't -- I don't -- I'm not a Facebook or any
4 computer things.

14:56 5 MR. STEINLE: Thank you, Mr. Jaber. Those are all the
6 questions that I have on direct examination.

14:56 7 THE COURT: Thank you, Mr. Steinle.

14:56 8 Mr. DeSouza?

14:56 9 CROSS-EXAMINATION

14:56 10 BY MR. DeSOUZA:

14:56 11 Q. Mr. Jaber, you were here earlier when we were looking -- or
12 when my client testified that after this letter was sent, the
13 photograph was removed from the Facebook page; correct?

14:56 14 A. Correct.

14:56 15 Q. And I believe your son testified he's aware it was removed,
16 but he's not the one that did it; correct?

14:56 17 A. Correct.

14:56 18 Q. And he said it's either him or his brother, your other son;
19 correct?

14:56 20 A. Correct.

14:56 21 Q. Okay. Do you have any explanation that you can provide to
22 the jury --

14:56 23 A. I don't know.

14:56 24 Q. -- as to -- hold on. Can you explain to the jury why it is
25 that one photograph and one photograph only was removed from

1 the Facebook page after a letter in November, 2021 was sent
2 out? Do you have any knowledge as to how it came down?

14:57

3 A. No.

14:57

4 MR. STEINLE: Well, I'm only going to object --

14:57

5 A. I cannot answer.

14:57

6 MR. STEINLE: I'm only objecting because lack of
7 foundation. When was it removed? I think there has to be more
8 foundation in order for that question to be asked. I mean, at
9 some point in time it disappears.

14:57

10 THE COURT: Yeah. And the real question is that, I
11 don't think can be answered, is, A, whether the letter was
12 sent; and if it was sent, was it sent via Fed Ex? There's no
13 tracking number on the face of the letter. There's no
14 indication from any witness who has testified thus far as to if
15 and when it was received. Equally important, the address to
16 which ostensibly the letter was sent doesn't match the store.
17 It's an incorrect address. So --

14:58

18 THE WITNESS: Exactly.

14:58

19 THE COURT: -- there are a lot of unknowns here that
20 appear that may never be answered. And the photo may have come
21 down, but it may be by total unmitigated coincidence, whether
22 it was three days later or three weeks later or two days
23 before.

14:58

24 There's no indication as to how that Fed Ex letter was
25 supposedly sent. Was it snail mail, four or five days because

1 of the pandemic, et cetera? Was it overnight? Was it two-day?
2 Was it five-day? None of those questions have been answered.

14:59 3 So to imply in the question that something was done after
4 the letter was sent makes an improper inference that the letter
5 was actually sent in the first place.

14:59 6 BY MR. DeSOUZA:

14:59 7 Q. Mr. Jaber, did you ever instruct either of your sons to
8 remove this Facebook post, the September 28th, 2020 Facebook
9 post from that Facebook page?

14:59 10 A. No.

14:59 11 Q. As you sit here today, do you know how it is that that post
12 was removed from the Facebook page?

14:59 13 A. No.

14:59 14 Q. You testified that you were the manager of Villard Food
15 Town prior to you purchasing it in 2017; correct?

14:59 16 A. Yes.

15:00 17 Q. How many years had you been the manager of the store?

15:00 18 A. 13.

15:00 19 Q. 13 years?

15:00 20 A. (Indicating.)

15:00 21 Q. And was your job during those thirteen years roughly the
22 same as it is today?

15:00 23 A. Yes.

15:00 24 Q. So you were the boss of the entire store during those 13
25 years?

15:00 1 A. Yes.

15:00 2 Q. Even though your brother owned the store, you were the
3 ultimate manager of the store making decisions for the store;
4 correct?

15:00 5 A. Correct.

15:00 6 Q. Okay. And as the manager for 13 years, you don't know
7 whether Villard Food Town did any advertising or marketing in
8 any way, shape, or form?

15:00 9 A. No, sir. I had to report to my brother for all. When I
10 was manager, he was the boss.

15:00 11 Q. Okay. Now, Mr. Steinle asked you whether you made any
12 profit from the use of this photo on the Facebook page;
13 correct? Do you remember that question?

15:00 14 A. Yes.

15:00 15 Q. Okay. You didn't pay for it; correct? You didn't pay to
16 put the photo on the Facebook page --

15:00 17 A. No.

15:00 18 Q. -- correct?

15:01 19 In fact, Nofal, LLC, going back to 2017, has never paid for
20 a single photograph that has appeared on its Facebook page;
21 correct?

15:01 22 MR. STEINLE: Well, I object. How does he know what
23 Nofal did or didn't do?

15:01 24 MR. DeSOUZA: He's here testifying on behalf of Nofal,
25 LLC. He's the owner, your Honor.

15:01 1 MR. STEINLE: Oh, I'm sorry. I thought -- I
2 apologize, and I withdraw the objection. I didn't know he was
3 referring to the LLC. I apologize.

15:01 4 MR. DeSOUZA: Yeah, sorry, it wasn't -- not the
5 individual.

15:01 6 BY MR. DeSOUZA:

15:01 7 Q. Sir, Nofal, LLC, Food Town Mart, has never paid for a
8 single photograph that has been displayed on its Facebook page;
9 correct?

15:01 10 A. No, sir.

15:01 11 Q. Okay. So I am -- just to make sure the record is clear: I
12 am correct, yes?

15:01 13 A. Yes.

15:01 14 Q. Okay. So you didn't pay for the pork chop photo. You
15 didn't pay for any other photo. Presumably you saved money by
16 not having to pay for any of those photos; correct?

15:02 17 A. I cannot afford it --

15:02 18 Q. Okay.

15:02 19 A -- the ad, from the beginning.

15:02 20 Q. And you testified you sell pork chops at the store;
21 correct?

15:02 22 A. Yes.

15:02 23 Q. And various meat products. I mean, the photo was chicken
24 wings and spare ribs as well; correct?

15:02 25 A. Correct.

15:02 1 Q. You sell all of those items in the store; correct?

15:02 2 A. Yes.

15:02 3 Q. You wouldn't sell them if they don't actually sell;

15:02 4 correct?

15:02 5 A. Yes.

15:02 6 Q. Right. So is it fair to say that every week that goes by

15:02 7 you're selling pork chops in the store?

15:02 8 A. Yes.

15:02 9 Q. Is it fair to say every week that goes by you're selling

15:02 10 chicken wings in the store?

15:02 11 A. Yes.

15:02 12 Q. Every week that goes by you're selling spare ribs in the

15:02 13 store?

15:02 14 A. Yes.

15:02 15 Q. And as I think we covered earlier, when those items sell,

15:02 16 the profit distributions go to you and to nobody else; correct?

15:02 17 A. No.

15:02 18 Q. That's not correct?

15:02 19 A. That's correct, they don't go to nobody.

15:02 20 Q. I'm sorry. So any profit made from the store after

15:02 21 employees are paid and expenses, that goes to you; correct?

15:02 22 A. Yes.

15:02 23 MR. DeSOUZA: Okay. No further questions. Thank you.

15:03 24 MR. STEINLE: Just for clarification purposes.

15:03 25 REDIRECT EXAMINATION

15:03

1 BY MR. STEINLE:

15:03

2 Q. Before September 28th of 2020, were you making money when
3 you sold chicken wings, before September 28th, 2020, before the
4 Facebook?

15:03

5 A. Yes.

15:03

6 Q. Before the Facebook on September 28th, 2020, were you
7 making money on spare ribs? Were you selling spare ribs?

15:03

8 A. Yes.

15:03

9 Q. Were you selling pork chops before September 28th of 2020?

15:03

10 A. Yes.

15:03

11 Q. Did you ever do any analysis or calculations to try to
12 determine whether or not the sale of pork chops only increased
13 to any respect or in any respect since September 28th of 2020?

15:03

14 A. No, sir.

15:03

15 MR. STEINLE: That's it. Nothing.

15:03

16 THE COURT: All right. Thank you, Mr. Jaber. You may
17 step down.

15:03

18 (The witness is excused.)

15:04

19 THE COURT: You may call your next witness.

15:04

20 Mr. Hamed, you're under the same oath which you took
21 earlier.

15:05

22 THE WITNESS: Sorry, can you say that again?

15:05

23 THE COURT: Yes. You testified earlier today;
24 correct?

15:05

25 THE WITNESS: Yes, sir.

15:05 1 THE COURT: Yeah. You're under the same oath.

15:05 2 THE WITNESS: Yes, sir.

15:05 3 THE COURT: You may proceed, Mr. Steinle.

15:05 4 AMJAD SHARIF HAMED,

15:05 5 called by the Defendants as a witness herein, having been

15:05 6 previously duly sworn, was examined and testified as follows:

15:05 7 DIRECT EXAMINATION

15:05 8 BY MR. STEINLE:

15:05 9 Q. Mr. Hamed, you testified previously, and I'm not going to

15:05 10 rehash that testimony. But you did testify, sir, that you

15:05 11 created the Facebook page on September 28th, 2020; create --

15:05 12 correct?

15:05 13 A. The Facebook post, yes, sir.

15:05 14 Q. Yeah, I'm sorry, the Facebook post.

15:05 15 A. Yes, sir.

15:05 16 Q. And when you created that Facebook post, sir, what was the

15:05 17 purpose of that Facebook post, a sale?

15:05 18 A. It was just the couple of things we had on sale for that

15:05 19 week. It was just honestly to bring in more customers.

15:05 20 Q. And in the Facebook post that you posted, it was for a sale

15:05 21 for a limited period of time?

15:05 22 A. For only one week, sir.

15:06 23 Q. Now, first of all, we're going to just kind of walk through

15:06 24 it, okay?

15:06 25 A. Okay.

15:06 1 Q. When you created this Facebook post, how did you go about
2 doing it?

15:06 3 A. Well, I opened up on Google and searched up pictures of
4 fresh chicken wings, fresh pork chops, fresh ribs, went to
5 Google Images, seen a couple of pictures, held down, saved the
6 photo into my camera roll, and then posted on Facebook.

15:06 7 Q. Just as it relates to the pork chop, keep it at the pork
8 chop --

15:06 9 A. Yes, sir.

15:06 10 Q. -- just as it relates to the pork chop, do you remember the
11 search that you put in?

15:06 12 A. I believe it was "fresh pork chops."

15:06 13 Q. And when that -- and that was in Google?

15:06 14 A. Yes, sir.

15:06 15 Q. And Google's a search engine; right?

15:06 16 A. Yes, sir.

15:06 17 Q. And when you did that, certain images popped up,
18 photographs popped up?

15:06 19 A. Yes, sir.

15:07 20 Q. And when the photographs popped up, what did you do as it
21 relates to the pork chops?

15:07 22 A. I pressed and held and saved the photo into my camera roll.

15:07 23 Q. So if you -- if the photo comes up, all you have to do is
24 press your thumb on it, and that photograph will automatically
25 drop into your photo log?

15:07 1 A. Well, yeah, once you --

15:07 2 MR. DeSOUZA: Objection, leading.

15:07 3 MR. STEINLE: I was just clarifying.

15:07 4 A. (Continuing.) So once you press and hold on the photo, it
5 gives you a task bar underneath. There's multiple options you
6 could do. And copy is one of those or save image is one of
7 those options.

15:07 8 BY MR. DeSOUZA:

15:07 9 Q. And that -- and that's what you did in this particular
10 case?

15:07 11 A. Yes, sir.

15:07 12 Q. And then after the photograph is in your photo log, what do
13 you do?

15:07 14 A. I go to Facebook and post it under where I wrote the price.

15:07 15 Q. Now, when you saw the photo in the Google Images, did you,
16 sir, see any restrictions on that photograph?

15:08 17 A. No, sir.

15:08 18 Q. And then when you did what you did by downloading it into
19 your photo log, did you see any restrictions on that photo?

15:08 20 A. No, sir.

15:08 21 Q. Do you know what a watermark is?

15:08 22 A. Yes, sir.

15:08 23 Q. Did you see any watermarks across the photograph?

15:08 24 A. No, sir.

15:08 25 Q. Did you edit, modify, or change that photograph in any

1 respect?

15:08 2 A. No, sir.

15:08 3 Q. Did you reduce it so that you would cut off anything from
4 that image?

15:08 5 A. No, sir.

15:08 6 Q. You used a photo from Google Images, downloaded it, and
7 added it to the website, that's what you did?

15:08 8 A. Add it to the Facebook page, yes, sir.

15:08 9 Q. Excuse me, to the Facebook page.

15:08 10 Did you, sir, have any concerns or reservations about
11 utilizing that photograph on September 28th, 2020?

15:08 12 A. No, sir.

15:09 13 Q. When you downloaded the picture, did anything pop up and
14 say, "Don't use it, don't use it," any warnings at all?

15:09 15 A. No, sir.

15:09 16 Q. Do you know whether that photograph is presently on Google
17 Images presently?

15:09 18 A. If I am not mistaken, it is still on there, sir.

15:09 19 Q. Now, with the Court's permission for demonstrative
20 purposes, for demonstrative purposes, I'm going to ask him to
21 recreate what he did on that particular date, with the Court's
22 permission.

15:09 23 THE COURT: Certainly.

15:09 24 MR. DeSOUZA: And, your Honor, I'll object on the
25 basis that Mr. Steinle had every opportunity to put a exhibit

1 in if he wanted to show a witness anything. He has done no
2 exhibits whatsoever. So if he is asking a witness live to
3 create a search online, I do find that objectionable.

15:09 4 MR. STEINLE: This is -- this is demonstrative.

15:10 5 THE COURT: Yes. No, the objection is overruled --

15:10 6 MR. STEINLE: Now --

15:10 7 THE COURT: -- noting that the --

15:10 8 BY MR. STEINLE:

15:10 9 Q. Mr. Hamed, can you pair your phone with the screen?

15:10 10 A. I can try to the best of my ability. And is it 425
11 AirPlay? Waiting for a code to pop up.

15:11 12 MR. DeSOUZA: Your Honor, it might be quicker if Mr.
13 Steinle just plugs in his computer and Mr. Hamed tells him what
14 search to put in, if it's -- if that's what we're waiting for.

15:11 15 THE COURT: Have you gone through this exercise with
16 our IT staff --

15:11 17 MR. STEINLE: I -- I did.

15:11 18 THE COURT: -- Mr. Steinle?

15:11 19 MR. STEINLE: I did exactly that on Friday. I was
20 here on Friday.

15:11 21 THE COURT: Okay.

15:11 22 MR. STEINLE: The IT staff went through this exact
23 procedure with me on Friday.

15:11 24 THE COURT: All right. We'll get IT up here.

15:11 25 Members of the jury, as soon as we're ready to proceed,

1 I'll invite you back into the courtroom so Mr. Hamed can
2 complete his demonstration.

15:11 3 Caitlin, call Eric Riedijk and get him here ASAP.

15:12 4 COURT SECURITY OFFICER: All rise.

15:12 5 (The jury left the courtroom.)

15:12 6 COURT SECURITY OFFICER: The Court stands in recess.

15:12 7 (A short recess was taken.)

15:21 8 COURT SECURITY OFFICER: All rise for the jury.

15:21 9 (The jury entered the courtroom.)

15:21 10 (The court is called to order.)

15:21 11 THE COURT: Mr. Steinle, you may continue.

15:21 12 BY MR. STEINLE:

15:21 13 Q. Amjad, have you now been able to link your telephone with
14 the television screen, the monitor?

15:21 15 A. Yes, sir.

15:21 16 Q. And now that you've linked it with the -- what -- what
17 we're seeing on the monitor is exactly what's on your phone,
18 sir?

15:21 19 A. This is -- yes. This is my home screen.

15:22 20 Q. And was your phone -- telephone used to copy the image
21 that's the subject of this lawsuit, sir?

15:22 22 A. Yes, sir.

15:22 23 Q. Now, can you please demonstrate for the jury the procedures
24 that you undertook to obtain the photograph -- and by the way,
25 starting with the search, using the search that you used, can

1 you begin -- begin the process by first of all doing the
2 search. And then once you find the results from the search,
3 then we'll take the next step.

15:22 4 A. Yes, sir. So I would go here.

15:22 5 Q. What search did you put in there, for the record?

15:22 6 A. "Fresh pork chops." And then I would press on images,
7 scroll. And if I am not mistaken, this is the exact picture
8 right here. I would press save to photos, swipe up, pick up my
9 camera roll. It's going to be this picture right here.

15:23 10 Q. And that's the picture that you just downloaded?

15:23 11 A. Yes, sir, so this is in my camera roll.

15:23 12 Q. Okay. And on that -- on that photograph, there's no
13 trademark, there's no copyright identification, is there?

15:23 14 A. As everybody in here can see, I don't see anything on
15 there.

15:23 16 Q. And is there any watermarking or any other indication, sir,
17 on that photograph?

15:23 18 A. No, sir.

15:23 19 Q. And that's the procedure that you used. And then once it's
20 in your photo log, you downloaded that -- or you uploaded, I
21 should say, that photograph into the Facebook page?

15:23 22 A. Yes, sir.

15:23 23 Q. Okay. Now, as the -- strike the question.

15:23 24 Are you still the principle user or person that takes care
25 of the Facebook page?

15:23

1 A. Yes, sir.

15:24

2 Q. Now, this event is alleged to have occurred on September
3 28th, 2020; correct?

15:24

4 A. Yes, sir.

15:24

5 Q. And were there other posts to the Facebook page on behalf
6 of Food Town Mart on September 28th of 2020, sir?

15:24

7 A. I believe there was.

15:24

8 Q. Are you -- is your Facebook page still a viable Facebook
9 page or the Food Town Mart page still a viable Facebook page?

15:24

10 A. Yes, sir.

15:24

11 Q. And by going to that Facebook page, sir, can you find
12 whether or not there was any additional posts that were done on
13 September 28th, 2020?

15:24

14 A. I sure can.

15:24

15 Q. Can you do that, sir.

15:24

16 A. Yes, sir. This is here on the Food Town Mart Facebook
17 page.

15:25

18 We're looking for September 28th, 2020?

15:25

19 Q. That's September 28th, 2020?

15:25

20 A. Yes, we do. I did put this up as well.

15:25

21 Q. And, again, just for the record, that post was made the
22 exact same date that the pork chop post was made?

15:25

23 A. Yes, sir.

15:25

24 Q. Now, Facebook -- I -- Tim Steinle has a Facebook page.
25 Your posts don't automatically come to me, do they?

15:25 1 A. The only way they would come to you is if you go on to --
2 if you search up Food Town Mart or if you are already following
3 or like our page.

15:25 4 Q. So that's the limited extent that this Facebook post has to
5 the internet, in other words, you have to like it or follow it
6 or I have to physically do a search?

15:26 7 A. Yes. You would have to physically go to your search bar
8 and search up Food Town Mart. If you are not already following
9 or liking this page, you would actually have to scroll through
10 the page to get to one of these posts as well.

15:26 11 Q. And are you able to determine, sir, the number of followers
12 for the Food Town Facebook page?

15:26 13 A. Yes. We have 1,000 followers.

15:26 14 Q. You have 1,000 followers?

15:26 15 A. Yes.

15:26 16 Q. And other than -- other than the search that I -- that
17 anybody could do, but you'd have to do a Food Town search;
18 correct?

15:26 19 A. Yes, sir.

15:26 20 Q. Other than the search, the only people that would see that
21 post would be one of the 1,000 followers?

15:26 22 MR. DeSOUZA: Objection, speculation.

15:26 23 THE COURT: No, it's qualified. The objection is
24 overruled.

15:26 25 BY MR. STEINLE:

15:26 1 Q. That would be the only people that can see it?

15:26 2 A. Yes, sir.

15:27 3 Q. And this photograph, sir, was posted nowhere else on the

4 internet, nor was it used by Food Town Mart except for this one

5 time on September 28th, 2020?

15:27 6 A. Yes, sir, that was the only time.

15:27 7 Q. And that was the only time this photograph was used by --

8 by this Facebook page, sir?

15:27 9 A. Yes, sir.

15:27 10 MR. STEINLE: That's all the questions that I have,

11 sir.

15:27 12 THE COURT: Mr. Hamed, can you tell us from your

13 finding that photo when that photo appeared on Google for the

14 first time? Was it 1997 or 2017 or some other time?

15:28 15 THE WITNESS: I -- I do not know, your Honor.

15:28 16 THE COURT: Thank you.

15:28 17 THE WITNESS: You're welcome.

15:28 18 CROSS-EXAMINATION

15:28 19 BY MR. DeSOUZA:

15:28 20 Q. Mr. Hamed, can you go ahead and reconnect your phone to --

15:28 21 A. Yes, sir.

15:28 22 Q. All right. Go ahead and run that same search again for

23 fresh pork chops that you -- that Mr. -- you showed Mr.

24 Steinle.

15:28 25 A. (Witness complies.)

15:28 1 Q. Okay. Now, my understanding is you clicked on the images
2 tab to see the list of images that Google displays for you;
3 correct?

15:28 4 A. Yes, sir.

15:28 5 Q. And if you scroll -- let's go the first row there. So the
6 very first result, it says "Pkg. Pork Chops." I think it's J
7 and -- I don't know if it's J&J Packing Company, do you see
8 that?

15:29 9 A. Yes, sir.

15:29 10 Q. Okay. And -- but that's obviously not the pork chop photo
11 that you chose; correct?

15:29 12 A. No, sir.

15:29 13 Q. So scroll down to the one that you did choose. Do we see
14 it anywhere? Oh, there it is. Okay. So assuming -- well, let
15 me ask you, do you know if this is the same order of
16 photographs when you ran your search back in 2020? Is it
17 different today?

15:29 18 A. I don't know.

15:29 19 Q. Do you know if the -- the photo at issue was the very first
20 result that popped up or if you had to scroll down further to
21 get there?

15:29 22 A. I do not know.

15:29 23 Q. Okay. But -- but you saw this photo, and you liked it, and
24 chose to use it; correct?

15:29 25 A. Yes, sir.

15:29 1 Q. Okay. What does it say -- so it says, "Fresh Raw Boneless
2 Center Cut," I'm going to assume it goes on to say "Pork
3 Chops," but I see three little dots there. But that's what it
4 says there; correct?

15:30 5 A. Yes, sir.

15:30 6 Q. What does it say directly underneath that?

15:30 7 A. "Prepared Food Photos."

15:30 8 Q. Okay. Rather than take a screenshot of it or save it to
9 your computer as you did, go ahead and just click on the photo
10 itself. Okay. So if you had clicked on this photo itself, now
11 we see the full name, correct, where it says, "Fresh Raw
12 Boneless Center Cut Pork Chops Prepared Food Photos Inc.";
13 correct?

15:30 14 A. Yes, sir.

15:30 15 Q. What does it say directly underneath that?

15:30 16 A. "Images may be subject to copyright."

15:30 17 Q. Okay.

15:30 18 A. "Learn more."

15:30 19 Q. Go ahead and click on "Learn more."

15:30 20 A. (Witness complies.)

15:30 21 Q. Now, this takes you to a page that says, "What is
22 copyright? What types of work are also subject to copyright?"
23 Correct?

15:30 24 A. Yes, sir.

15:31 25 Q. You never clicked on that link when you did this search for

1 this pork chop photo; correct?

15:31 2 A. I never clicked on the photo to open up that photo in of
3 itself.

15:31 4 Q. Okay. But nothing -- nothing stopped you from clicking on
5 that photo or any other photo that you found and posted on the
6 Facebook page; correct?

15:31 7 A. No, sir.

15:31 8 Q. You can -- you -- any time you could have just clicked on
9 the photos; correct?

15:31 10 A. Yeah, I could have. It was just --

15:31 11 Q. But looking at this, you agree this is a page that goes on
12 to say, "Copyright ownership gives the owner the exclusive
13 right to use the work, with some exceptions. When a person
14 creates an original work fixed in a tangible medium, he or she
15 automatically owns copyright to the work." And it goes on to
16 describe things about copyright, do you see that?

15:31 17 A. Yes, sir.

15:31 18 Q. All right. Why don't you go back. So we're still on -- if
19 we had clicked on the photo, this is what we'd be looking at;
20 correct?

15:31 21 A. Yes, sir.

15:31 22 Q. And you see the way it's -- there's a blue button that says
23 "visit"?

15:31 24 A. Yes, sir.

15:31 25 Q. Go ahead and click that for us.

15:31 1 A. (Witness complies.)

15:32 2 Q. Does it say what website, I guess the URL that you -- that

3 you're on right now on your phone? What is it?

15:32 4 A. PreparedFoodPhotos.com.

15:32 5 Q. Okay. And at the top, that is the photo at issue; correct?

15:32 6 A. Yep.

15:32 7 Q. Scroll down a little bit.

15:32 8 A. (Witness complies.)

15:32 9 Q. Right there. Do you see how it says, "Download photo, to

10 download images, subscribe here"?

15:32 11 A. Yes, sir.

15:32 12 Q. Is it correct that when doing your search and finding

13 whatever results you found, you never actually visited the

14 website on which any of these photos was actually stored or

15 hosted, you just looked at the Google search result and

16 downloaded from there?

15:32 17 A. Yes, sir.

15:32 18 Q. Okay. But you certainly could have gone, clicked through

19 to the website, and see where the photo was; correct?

15:33 20 A. I mean anybody could do that, but if it's -- you're -- if

21 I'm doing something right off the bat --

15:33 22 Q. Well, let me ask you this, Mr. Hamed.

15:33 23 A. Yes, sir.

15:33 24 Q. If you had gone to the website --

15:33 25 A. Yes, sir.

15:33 1 Q. -- and actually gone here and said "To download images
2 subscribe here," would you have investigated that further at
3 that point?

15:33 4 A. If it says "subscribe here," I probably would have.

15:33 5 Q. Okay.

15:33 6 A. And then Google is a public platform. Pretty sure if -- I
7 don't know, if you post a photo of yourself on internet, I
8 don't know how that works, but I'm pretty sure if it's on
9 Google -- I mean, to my knowledge, I don't know about how that
10 work -- but if I had posted a picture of myself on Google and
11 somebody were to take it, I wouldn't know that -- I didn't know
12 that you owned pictures -- or unless it had a disclaimer or a
13 warning, attention to it.

15:33 14 Q. I mean, I guess to summarize, you didn't know any better
15 based on the knowledge that you had when you did this search;
16 correct? Is that right?

15:34 17 A. I mean, I didn't know any better. There was no warnings.
18 There was into copyright on my --

15:34 19 Q. Well --

15:34 20 A. -- I mean --

15:34 21 Q. -- sir --

15:34 22 A. Yes.

15:34 23 Q. -- to be fair, the moment you clicked on that photograph --

15:34 24 A. Yes, sir.

15:34 25 Q. -- it gave you a warning that images may be subject to

1 copyright; correct?

15:34 2 A. Yes, sir.

15:34 3 Q. And that's directly from Google, that's not from my client,
4 it's not from me; correct?

15:34 5 A. I don't know that.

15:34 6 Q. Well, go ahead, go back.

15:34 7 A. I don't know how Google --

15:34 8 Q. Let's go back to the search results.

15:34 9 A. Yeah.

15:34 10 Q. You know, indulge me. Click on the first search result
11 there. It looks like four pork chops. It says, "Five Pound
12 Best Pork Chops."

15:34 13 A. Uh-huh.

15:34 14 Q. All right. Underneath there it says, "Check website for
15 latest pricing and availability. Images may be subject to
16 copyright." It has that same "learn more" message; correct?

15:34 17 A. Yes, sir.

15:34 18 Q. Also has a blue link where you can visit the website where
19 this photo is; correct?

15:34 20 A. Yes, sir.

15:35 21 Q. All right. Go back. Click on the second one. Same,
22 "Images may be subject to copyright, learn more"?

15:35 23 A. Yes, sir.

15:35 24 Q. Blue link "visit"?

15:35 25 A. Yes, sir.

15:35 1 Q. Okay. Go back again. I mean, let me just ask you this,
2 Mr. Hamed, because it's getting late in the day. Do you want
3 to keep clicking on images or do you think that if you had
4 clicked on the next one, it's also going to say, "Images may be
5 subject to copyright"?

15:35 6 A. Probably says same thing. I don't know, though.

15:35 7 Q. Okay. So if you had endeavored to do more than just get a
8 search result and take a screenshot right from your phone, you
9 would have seen, "Images may be subject to copyright," at least
10 with respect to the photograph at issue here; correct?

15:35 11 A. Yes, sir.

15:35 12 Q. Okay. And if you had seen that, would you have done
13 something more than just download the photo right away and go
14 on about your business? Would you have looked into it further?

15:35 15 A. Yes, sir.

15:35 16 Q. Okay. And if you had looked into it further and found out
17 you had to pay for this image or subscribe to a library of
18 images, would you have chosen a different image, one you didn't
19 have to pay for?

15:36 20 A. Probably.

15:36 21 Q. You don't know?

15:36 22 A. I don't know.

15:36 23 Q. You might have still downloaded it even if it said, "Images
24 may be subject to copyright"?

15:36 25 A. Maybe, maybe not, I don't know. That's --

15:36 1 Q. Okay. But for any photo --

15:36 2 A. Yes.

15:36 3 Q. -- that was posted on the Facebook page, and you were
4 scrolling through it with Mr. Steinle before, the Facebook
5 page, all those different photos, some of those photographs you
6 took yourself; correct?

15:36 7 A. Yes, sir.

15:36 8 Q. You have a camera or at least your phone?

15:36 9 A. My phone, yes, sir.

15:36 10 Q. Some of the things, I think there was a -- I don't know, it
11 was a speaker or a hookah or something. That was a picture you
12 took; correct?

15:36 13 A. Yes, sir.

15:36 14 Q. Okay. So you're not searching the internet for photos that
15 you took; correct?

15:36 16 A. No, sir.

15:36 17 Q. Other than photographs you took, was every other photo on
18 that Facebook page the same process of Google search, download
19 photo, onto Facebook?

15:36 20 A. No, sir.

15:37 21 Q. Okay. Well, what other photos were different than that
22 process?

15:37 23 A. The photos that I took myself.

15:37 24 Q. Well, that's what I said. Other than those.

15:37 25 A. Oh, well --

15:37 1 Q. Other than the photos you took or your brother took before
2 you, is every other photo on there the same process of Google
3 search, download, don't visit website, go to Facebook?

15:37 4 A. No.

15:37 5 Q. No?

15:37 6 A. No, sir.

15:37 7 Q. Well, what --

15:37 8 A. I don't know what you're -- I don't understand what you're
9 asking.

15:37 10 Q. Okay. Well, some photos you took yourself --

15:37 11 A. Yeah.

15:37 12 Q. -- and put them on the Facebook page; correct?

15:37 13 A. Yes, sir.

15:37 14 Q. You certainly did not Google to find those photos --

15:37 15 A. No, sir.

15:37 16 Q. -- you already -- your already owned them?

15:37 17 A. Yes.

15:37 18 Q. Exclude those photos. They're out right now. The other
19 photos that are on the Facebook page, are all of those photos
20 the same process of Google search --

15:37 21 A. Are we talking about this pork chop photo?

15:37 22 Q. This pork chop photo or --

15:37 23 A. Yes, sir. Then, yes, sir.

15:37 24 Q. -- or any other photo that you did not take yourself?

15:37 25 A. Yes, sir.

15:37 1 Q. Okay. So whether it's chicken wings or spare ribs or
2 anything else, if you didn't take it, this process by Google;
3 correct?

15:38 4 A. Yes, sir.

15:38 5 Q. Okay. Now, the post that -- the September 28th, 2020 post
6 that had this --

15:38 7 A. Yes, sir.

15:38 8 Q. -- I think Mr. Steinle asked you what was the point of it,
9 and you said kind of as a customer draw to bring customers into
10 the store to buy these items; is that right?

15:38 11 A. Yes, sir.

15:38 12 Q. Okay. I mean, these were items that you had in stock;
13 right?

15:38 14 A. Yes, sir.

15:38 15 Q. You wouldn't be posting a sale if you weren't actually
16 selling these items; correct?

15:38 17 A. No, sir.

15:38 18 Q. And you were trying to get customers from the local area to
19 come to your store and shop; correct?

15:38 20 A. Well, not from the local area. It was customers who follow
21 us on Facebook, it was for them to know that we have pork chops
22 at this price --

15:38 23 Q. Well, any --

15:38 24 A -- for the week, yes, sir.

15:38 25 Q. I guess any of your thousand followers could see this

1 message and say, oh, pork chops, 2.29 a pound, let me go shop;
2 right?

15:39 3 A. Yes, sir.

15:39 4 Q. And that was the idea, to get people who were following you
5 to come in and shop your store; correct?

15:39 6 A. Yes, sir.

15:39 7 Q. Or if someone just did a search for, you know, pork chops
8 Milwaukee, Wisconsin, maybe this would pop up as well and that
9 would act as a --

15:39 10 A. It wouldn't pop up unless we had boosted it, but I never
11 boosted --

15:39 12 Q. Okay.

15:39 13 A. -- so...

15:39 14 Q. That -- now, you said this was most likely a sale for a
15 week or so; correct?

15:39 16 A. Yes. Only a week.

15:39 17 Q. But the photo itself, whether it was a sale for a week or
18 not, the photo stayed on that website on that Facebook page
19 from September 28th, 2020 through at least November, 2021;
20 correct?

15:39 21 A. So has my Valentine's Day sale and my Christmas message and
22 most of our sales do stay on our page, but it's just for
23 customers to interact with us, you know, they have questions,
24 they can ask, hey, is this on sale.

15:40 25 Q. And all I'm asking, Mr. Hamed, is after the sale is over,

1 you don't go into the Facebook page and take the photos down;
2 correct?

15:40 3 A. No, sir.

15:40 4 Q. So if they're -- they might relate to 2019, 2020, 2021, but
5 once the sale has come and gone, the photo just stays on the
6 Facebook page unless someone physically goes in and takes it
7 down; right?

15:40 8 A. Yes, sir.

15:40 9 Q. And it -- but it's not been your practice to take the
10 photos down after the sale has expired; correct?

15:40 11 A. No, sir.

15:40 12 MR. DeSOUZA: Okay. I have no further questions for
13 you, Mr. Hamed.

15:40 14 THE WITNESS: Thank you.

15:40 15 REDIRECT EXAMINATION

15:40 16 BY MR. STEINLE:

15:40 17 Q. Regardless of what you could have done, what you
18 demonstrated today going to the thumb -- is it called a
19 thumb --

15:40 20 A. When you hold down your thumb.

15:40 21 Q. That's -- that's what you did in this particular case as
22 you saw it after your Google search, you held your thumb on it,
23 it downloaded. There was no restrictions on the downloaded
24 photo at all, and then you utilized it, that's what you did?

15:40 25 A. Yes, sir.

15:40 1 MR. STEINLE: Thank you. That's it.

15:41 2 THE COURT: All right. Thank you, Mr. Hamed. You may

3 step down.

15:41 4 THE WITNESS: Thank you, your Honor.

15:41 5 (The witness is excused.)

15:41 6 THE COURT: Anything further, Mr. Steinle?

15:41 7 MR. STEINLE: The defense would rest.

15:41 8 THE COURT: All right. Any rebuttal, Mr. DeSouza?

15:41 9 MR. DESOUZA: No rebuttal, your Honor.

15:41 10 THE COURT: Thank you.

15:41 11 Members of the jury, subject to the Court staff reviewing

12 with counsel the receipt of the exhibits which have come before

13 you today, the Court does herewith declare the receipt of

14 evidence in this case closed. That now brings the Court and

15 counsel to the next phase of the case in which the Court must

16 address with counsel the instructions on the law that will

17 guide you during your deliberations.

15:42 18 Quite a bit of work has already been completed on the

19 instructions, as well as the verdict form. Given the hour

20 today, I'm going to invite you to be back in the jury room

21 tomorrow at 1:00. At that time, the Court will instruct you on

22 the law which applies to this case.

15:42 23 It will take the Court about 45 minutes to an hour to

24 deliver its instructions. As the Court reads these

25 instructions aloud, each of you will have a copy of the Court's

1 instructions to follow as I read them. Following the Court's
2 instructions on the law, counsel will be afforded an
3 opportunity to once again address you in closing arguments.
4 That is an opportunity for each side to discuss with you what
5 they believe the evidence in this case has shown or perhaps not
6 shown.

15:43 7 Since the plaintiff has the burden of proof, Mr. DeSouza
8 will have an opportunity to address you in both an opening
9 argument as well as a final rebuttal. In this branch of the
10 Court, rebuttal is limited to just that, rebuttal. No new
11 argument not raised in plaintiff's opening argument can be
12 raised in rebuttal, just rebuttal.

15:44 13 Thereafter, the Court will have a few concluding
14 instructions for you to guide you in your deliberations. Once
15 the Court has completed those final instructions, the case will
16 be in your hands to deliberate, to reach a completed, fair,
17 just verdict.

18 Whatever your verdict is as to each question you may be
19 required to answer in order to arrive at a completed verdict
20 must be unanimous. As you review the verdict form, you will
21 note that certain questions in the verdict only need be
22 answered if you answered a previous question in a particular
23 way. So it's important as you follow the Court's instructions
24 and as you deliberate to keep in mind the Court's admonition
25 about not needing to needlessly answer questions that are not

1 to be answered unless you answered a previous question in a
2 particular way.

15:45 3 Once the case is in your hands, it will be left entirely up
4 to you as to when and how long you will deliberate. For
5 example, tomorrow if you happen to get the case at 3:15, you
6 may wish to deliberate into the evening. If not, at 5:00 or
7 5:30, we'll suspend for the day, and you'll be invited to
8 return to the jury room at 8:30 the following morning, which
9 would be Wednesday.

15:46 10 So that is a matter that will be entirely left up to you as
11 to how long you may wish to deliberate in order to arrive at a
12 complete unanimous verdict. So you may want to think about
13 tonight any plans for tomorrow and how long you may wish to
14 deliberate.

15:46 15 Once the case is in your hands, we will make suitable
16 arrangements for building security and an evening meal. So at
17 some point tomorrow, Ms. Vraa will inquire of you as to how
18 long you may wish to deliberate tomorrow. And if you wish to
19 stay into the evening, we'll make these other arrangements. So
20 keep that in mind.

15:47 21 With those comments, I'm now going to excuse you for the
22 balance of today, and we'll see you tomorrow at 1:00. Have a
23 great evening. Leave your notebooks on your chair.

15:47 24 COURT SECURITY OFFICER: All rise.

15:47 25 (The jury left the courtroom.)

15:47

1 COURT SECURITY OFFICER: You can be seated.

15:47

2 THE COURT: On Thursday, the Court staff provided
3 counsel with a draft set of instructions and a verdict form.
4 We're going to hold a formal jury instruction tomorrow morning
5 beginning at 9:00 o'clock. In the meantime, whether here in
6 the courtroom this afternoon or at a suitable location, I would
7 encourage both sides to meet and review the instructions that
8 the Court has put together. And if you have suggested changes
9 or modifications, whether in the jury instructions or the
10 verdict form, we'll be prepared to address your requests
11 tomorrow morning starting at 9:00.

15:48

12 Obviously, whatever changes be made, whether they be small
13 or significant, we will need to get them formatted, printed.
14 And it takes some time for all of that to be accomplished,
15 because like the jurors, each of you will have a copy of the
16 Court's instructions to follow as the Court reads them.

15:49

17 I do not expect that counsel will be rehashing the jury
18 instructions, other than mentioning them by reference during
19 your closing arguments since the jury will already have had the
20 benefit of those instructions before you close.

15:49

21 Anything else you want to address this afternoon?

15:49

22 MR. STEINLE: Your Honor --

15:49

23 MR. DeSOUZA: I'm sorry.

15:49

24 MR. STEINLE: -- may it please the Court, so it's not
25 deemed to be waived, I'm renewing my motion to dismiss the case

1 and to dismiss the various counts, but I don't want it to be
2 deemed waived, so I'm moving the Court --

15:49

3 THE COURT: Certainly. Your place holder is well
4 taken and is protected.

15:50

5 MR. STEINLE: Thank you.

15:50

6 MR. DeSOUZA: Your Honor, I'd like to make my own Rule
7 50 motion for judgment as matter of law with respect to the
8 defendants' defense of fair use. It's their last remaining
9 affirmative defense. I think in the Court's draft jury
10 instructions and as the Court is well informed on the law, fair
11 use is a defense that is the defendant's burden to prove. It
12 generally involves -- it doesn't have to be a nonprofit use,
13 but it generally involves a nonprofit use for purposes of
14 criticism, parody, education, scholarship, all the various
15 reasons that I went through with Mr. Jaber. The use here, your
16 Honor, was posting on a Facebook page to advertise the sale of
17 pork chops at 2.29 a pound. And as Mr. Hamed testified, the
18 goal there was to engage customers and bring them into the
19 store.

15:50

20 I think under any reading of any fair use case law -- and
21 the Court certainly doesn't have to go all the way to the
22 Supreme Court's recent case in *Warhol vs. Prince*, this is not
23 fair use, your Honor. This is a commercial use, an
24 advertisement to sell a product.

15:51

25 THE COURT: All right. Happy to address it further,

1 particularly when we get to jury instructions tomorrow. So
2 you've made your record. Mr. Steinle has made his. We'll see
3 you both tomorrow at 9:00 o'clock. The Court stands in recess.

15:51 4 COURT SECURITY OFFICER: All rise.

15:51 5 (At 3:51 p.m. the hearing ended.)

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C E R T I F I C A T E

I, JENNIFER L. STAKE, RDR, CRR, an Official Court Reporter for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing is a true and correct transcript of all the proceedings had and testimony taken in the above-titled matter as the same are contained in my original machine shorthand notes on the said trial or proceeding.

Dated this 3rd day of December, 2024.

Milwaukee, Wisconsin.

Jennifer L. Stake, RDR, CRR
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ELECTRONICALLY SIGNED BY JENNIFER L. STAKE
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